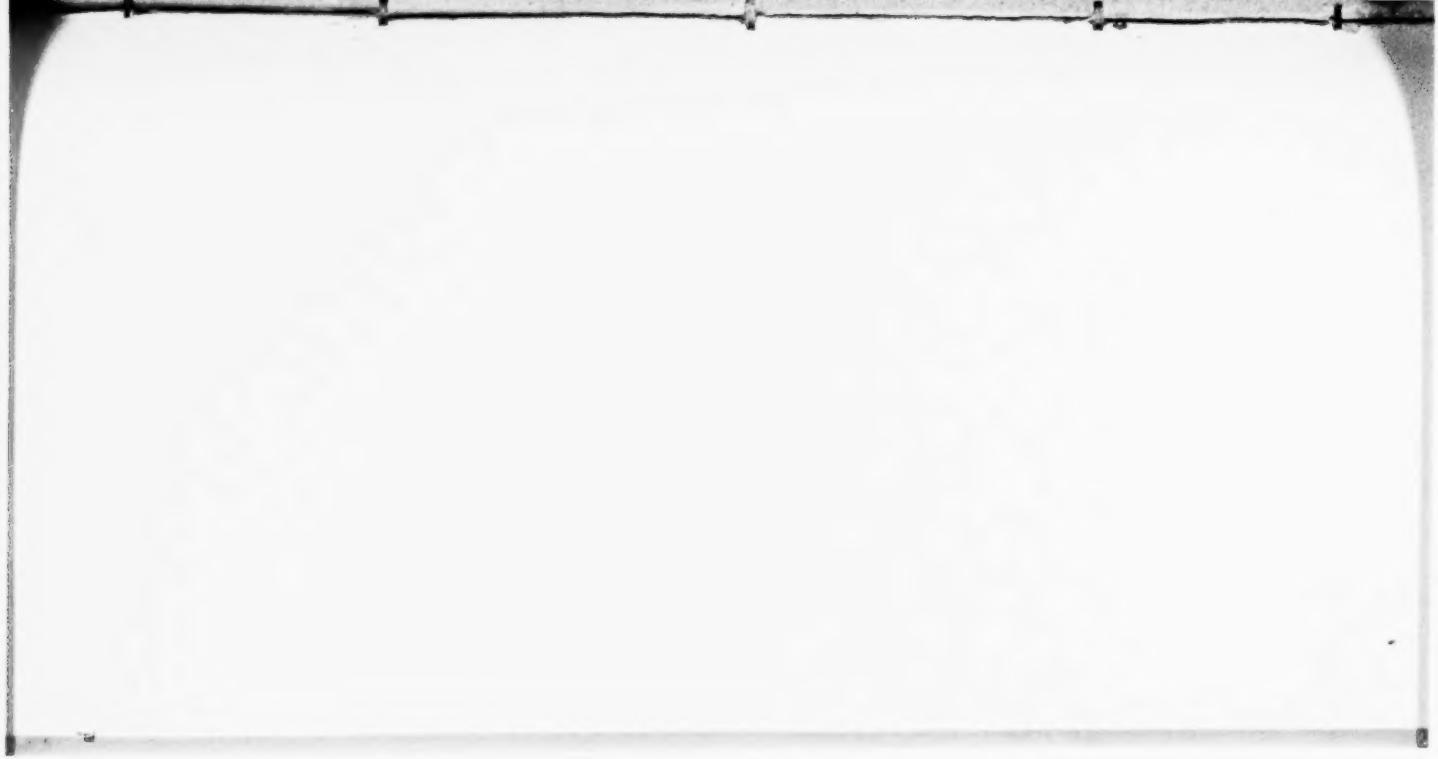

CLERK'S COPY. 2998

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 275.

LONE WOLF, PRINCIPAL CHIEF OF KIOWAS; ESHITIE, PRINCIPAL CHIEF OF COMANCHES; WHITE BUFFALO, KO-KOY-TAUDLE, MAR-MO-SOOK-CAR-WER, NARWATS, TOO-WI-CAR-NE, WILLIAM TIVIS, AND DELOS K. LONE-WOLF, APPELLANTS,

vs.

ETHAN A. HITCHCOCK, SECRETARY OF THE INTERIOR; WILLIAM A. JONES, COMMISSIONER OF INDIAN AFFAIRS, AND BINGER HERMANN, COMMISSIONER OF THE GENERAL LAND OFFICE.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED MARCH 18, 1902.

(18,454.)

29990

(18,454.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 601.

ONE WOLF, PRINCIPAL CHIEF OF KIOWAS; ESHITIE, PRINCIPAL CHIEF OF COMANCHES; WHITE BUFFALO, KO-KOY-TAUDLE, MAR-MO-SOOK-CAR-WER, NARWATS, TOO-WI-CAR-NE, WILLIAM TIVIS, AND DELOS K. LONE-WOLF, APPELLANTS,

vs.

THAN A. HITCHCOCK, SECRETARY OF THE INTERIOR; WILLIAM A. JONES, COMMISSIONER OF INDIAN AFFAIRS, AND BINGER HERMANN, COMMISSIONER OF THE GENERAL LAND OFFICE.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

INDEX.

	Original.	Print.
aption	1	1
ranscript from the supreme court of the District of Columbia	1	1
Caption	1	1
Bill of complaint	1	1
Rule to show cause and marshal's return	16	16
Affidavit of E. A. Hitchcock	16	16
Affidavit of Lone Wolf	18	18
Motion for leave to amend bill	19	19
Petition for leave to be made parties complainant	22	22
Complainant allowed to amend bill	25	25

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MARCH 25, 1902.

	Original.	P
Application for temporary injunction denied	25	
Opinion of Justice Bradley	26	
Demurrer to bill of complaint	34	
Decree, appeal, and amount of appeal bond fixed	35	
Memorandum: $100.00 deposited in lieu of bond	36	
Clerk's certificate	36	
Minute entry of submission	37	
Opinion	38	
Decree	50	
Motion for re-argument	51	
Opinion on motion for re-argument	53	
Order overruling motion for re-argument	55	
Order allowing deposit in lieu of bond	55	
Memorandum: $100 deposited in lieu of bond	55	
Citation and service	56	
Clerk's certificate	57	

In the Court of Appeals of the District of Columbia.

LONE WOLF ET AL., Appellants,
vs.
ETHAN A. HITCHCOCK ET AL. } No. 1109.

a Supreme Court of the District of Columbia.

LONE WOLF, Principal Chief of Kiowas; Eshitie, Principal Chief of Comanches; White Buffalo, Ko-Koy-Taudle, Mar-Mo-Sook-Car-Wer, Narwats, Too-Wi-Car-Ne, William Tivis, and Delos K. Lonewolf
vs.
ETHAN A. HITCHCOCK, Secretary of the Interior; William A. Jones, Commissioner of Indian Affairs, and Binger Hermann, Commissioner of the General Land Office. } No. 22338. In Equity.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Bill of Complaint.*

Filed Jun- 6, 1901.

In the Supreme Court of the District of Columbia, June Term, 1901.

LONE WOLF, who Sues as well for Himself as all Other Members of the Confederated Tribes of the Kiowa, Comanche, and Apache Indians Residing in the Territory of Oklahoma, Complainant,
vs.
ETHAN A. HITCHCOCK, Secretary of the Interior; William A. Jones, Commissioner of Indian Affairs, and Binger Hermann, Commissioner of the General Land Office, Respondents. } No. 22338. In Equity.

To the honorable the chief justice and the associate justices of the supreme court of the District of Columbia:

Your orator, Lone Wolf, who sues as well for himself as all other members of the confederated tribes of Kiowa, Comanche, and Apache

Indians residing in the Territory of Oklahoma, respectfully represents that he is now and always has been a member of the Kiowa tribe of Indians, which is now united with the Comanche and Apache tribes, and that he resides in the said Territory of Oklahoma and has so resided since said tribes were located in said Territory, in the year 1868, then known as the Indian Territory, and that all of said confederated tribes reside in the said Territory and have so resided therein since said year 1868; that said confederated
2 tribes keep up their tribal organizations in said Territory and have so kept up said tribal organizations in said Territory for many years for the transaction of all the business of said tribes.

Your orator further states that he brings this suit as well for himself as all other members of the said confederated tribes of Indians, residing in said Territory whose lands, amounting to nearly three million acres, are situated in said Territory of Oklahoma; that the question of the allotment of their said lands in part and the sale of their surplus lands and the treaties by which said lands are held is one of common and general interest to all the members of the said confederated tribes of Kiowa, Comanche, and Apache Indians residing in said Territory, and that the members of the said confederated tribes residing in said Territory and against whom it is threatened by the said respondents to enforce the provisions of certain pretended acts of Congress, which are unconstitutional and void and which will deprive said confederated tribes of their lands without their consent and against their repeated protests, are very numerous—in fact, nearly three thousand in number—and it would be impracticable to bring them all before this honorable court. Your orator therefore brings this his bill, as well for himself as all other members of said confederated tribes of Indians residing in the said Territory of Oklahoma, against the said Ethan A. Hitchcock, Secretary of the Interior; William A. Jones, Commissioner of Indian Affairs, and Binger Hermann, Commissioner of the General Land Office, each and all of them being citizens of the United States, residing in the said District of Columbia.

And thereupon your orator complains and says that prior to the year 1868 the said Kiowa, Comanche, and Apache tribes of
3 Indians owned and were in possession of large tracts of country in the State of Kansas and elsewhere, and that the United States Government was desirous of purchasing said lands by exchanging other lands therefor; that to this end a treaty was concluded at the council camp on Medicine Lodge creek, in the State of Kansas, October 21, 1867, by the Kiowa and Comanche tribes of Indians with the United States, which was proclaimed August 25, 1868, by which, for and in consideration of the advantages and benefits conferred by said treaty, the following district of country, to wit:

"Commencing at a point where the Washita river crosses the 98th meridian west from Greenwich, thence up the Washita river, in the middle of the main channel thereof, to a point thirty miles by river west of Fort Cobb as now established; thence due west to

the north fork of Red river, provided said line strikes said river east of the one-hundredth meridian of west longitude; if not, then only to said meridian line, and thence south on said meridian line to the said north fork of Red river; thence down said north fork, in the middle of the main channel thereof, from the point where it may be first intersected by the lines above described to the main Red river; thence down said river, in the middle of the main channel thereof, to its intersection with the ninety-eight- meridian of longitude west from Greenwich; thence north on said meridian line to the place of beginning,"

was set apart for the absolute and undisturbed use and occupation of the Kiowa and Comanche tribes of Indians, and for such other friendly tribes or individual Indians as from time to time they (the said tribes) may be willing, with the consent of the United States, to admit among them; and the United States then solemnly

4 agreed by the terms of said treaty that no person, except those therein authorized so to do, and except such officers, agents, and employés of the Government as may be authorized to enter upon Indian reservations in discharge of duties enjoined by law, should ever be permitted to pass over, settle upon, or reside in the territory described in said treaty and above set forth or in such territory as may be added to said reservation for the use of said Indians (15 U. S. Stats., pp. 581–587); that at the said time and place, to wit, on the 21st day of October, 1867, a supplemental treaty was concluded between said Kiowa and Comanche tribes and the Apache tribe of Indians and the United States, which was proclaimed on the said 25th day of August, 1868, by the terms of which the said Apache tribe of Indians agreed to confederate and become incorporated with the said Kiowa and Comanche Indians, and to accept as their permanent home the reservation described in the aforesaid treaty with the Kiowa and Comanche tribes, concluded, as aforesaid, at the said time and place, and said Apache Indians in said supplemental treaty pledged themselves to make no permanent settlement at any place nor on any lands outside of said reservation.

And the said Apache tribe of Indians, by the provisions of said supplemental treaty and in consideration of the advantages conferred thereby upon said tribe, agreed to observe and faithfully comply with all the stipulations and agreements entered into by the Kiowas and Comanches in said first-named treaty, and to do and perform all other things enjoined upon said tribes by the provisions of said first-named treaty, and said Apache tribe of Indians, by the said provisions of said supplemental treaty, gave up and forever relinquished to the United States all rights, privileges, and grants then vested in them or intended to be transferred to

5 them by the provisions of other treaties between the United States, themselves, and other Indian tribes (15 U. S. Stats., pp. 589–592).

That the eleventh article of said first-named treaty between the Kiowa and Comanche tribes and the United States was to the effect

that in consideration of the advantages and benefits conferred by said treaty and the many pledges of friendship by the United States, the tribes who are parties of said treaty expressly stipulated, among other things, that they would relinquish all right to occupy permanently the territory outside of their reservation as defined in said treaty, and said tribes further expressly agreed that they would withdraw all opposition to the construction of certain railroads mentioned therein, and not to attack white persons or wagon trains, coaches, or cattle belonging to the people of the United States, and to withdraw all opposition to the establishment of military posts in the Western Territories.

That by the twelfth article of said first-mentioned treaty it was provided as follows:

"ARTICLE 12. No treaty for the cession of any portion or part of the reservation herein described, which may be held in common, shall be of any validity or force as against the said Indians, unless executed and signed by at least three-fourths of all the adult male Indians occupying the same, and no cession by the tribe shall be understood or construed in such manner as to deprive, without his consent, any individual member of the tribe of his rights to any tract of land selected by him as provided in article III (VI) of this treaty."

6 That the said article six of said treaty, to which reference is made in said article twelve, provided that if any individual belonging to said tribes of Indians, being the head of a family, should desire to commence farming he shall have the privilege to select a tract of land within said reservation, not exceeding 320 acres in extent, which when settled should cease to be held in common; but the same was to be held in the exclusive possession of the person selecting it and his family so long as he or they may continue to cultivate it.

Your orator further represents unto your honors that after the said ratification and promulgation of said treaties the said Kiowa, Comanche, and Apache tribes of Indians removed to and settled upon the said reservation, and that they have resided thereon from said time hitherto and still continue to reside thereon; that they have faithfully kept on their part all the promises and agreements contained in said treaties; that they have never agreed or consented to relinquish their right to occupy said lands contained in said reservation or signed any treaty for that purpose, as provided in article twelve of said first-named treaty; that in the year 1892 a commission composed of David H. Jerome, Alfred M. Wilson, and Warren G. Sayre, claiming to represent the United States, came to Fort Sill, on said reservation, and sent out for and brought before them certain members of said Kiowa, Comanche, and Apache tribes of Indians, to whom certain false and fraudulent representations were made, whereby 456 members of said tribes were induced to sign a paper, which they were informed was a treaty or agreement with the United States in reference to their lands, which paper is known as the Jerome treaty; that one Joshua Given, a Kiowa Indian

who had intermarried with a white woman, and one Edward L.
7 Clark, a white man, acted as interpreters and assumed to translate said treaty or agreement, but that instead of faithfully and truly translating said treaty they falsely and fraudulently misrepresented the provisions of said treaty, so that as signed it did not express the wishes of said Indians; that the name of the wife of said Given and the name of said Clark were inserted in said treaty and they were adopted into the tribe and made equal with the Indians in sharing the lands of the tribe; that a provision was inserted in said Jerome treaty or agreement to the effect that Hugh L. Scott, an officer of the United States army then stationed at said Fort Sill, and George D. Day, the United States Indian agent on said reservation, and five other white men named therein should each be entitled to 160 acres of land in said reservation, which were to be allotted to them by the provisions of said treaty; that your orator did not know when he signed said treaty that said persons were mentioned therein; that said Agent Day falsely represented to the Interior Department that there were only 562 adult male members of said tribes, and that the 456 names of adult male members who signed said treaty were more than three-fourths of all the adult male members of said tribes; that afterwards the Secretary of the Interior caused a census of said Indians to be taken for the purpose of making a *per capita* payment to said Indians, and he reported to Congress on the 13th day of January, 1900, that at or about that time there were 639 male members of said tribes over the age of 21 years, and that the number who signed said treaty was 23 less than three-fourths of all the adult male members of said tribes. See Senate Document No. 76, first session, 56th Congress, in which docu-
8 ment said respondent, Ethan A. Hitchcock, then and now Secretary of the Interior, reported officially to Congress as follows:

"It therefore seems that besides wil-ful/ misrepresentation and false translations to the Indians, as charged, to influence their action and induce them to sign the agreement, that the department was also misled as to the actual number of adult male Indians in the tribes." The said respondent then called the attention of Congress to the said 12th article of said treaty, concluded in 1868 at Medicine Lodge creek, which, as stated by said respondent, "precludes a less number than three-fourths of the adult male members of the tribes from ceding their lands." The said respondent, being then and now Secretary of the Interior, advised Congress that said treaty should not be ratified. See said Senate Document No. 76. Therefore your orator alleges and charges that the signatures obtained to said Jerome treaty were obtained by false and fraudulent translation of said treaty, and that no members of said tribes of Indians would have signed the same had they been truly informed as to the provisions of said treaty; and that, even after the false and fraudulent practices which were resorted to, your orator alleges and charges that three-fourths of the male adult members of said tribes never signed said Jerome treaty, as is required by the terms of the said treaty concluded at Medicine Lodge creek, in Kansas, in 1868.

Your orator further states that soon after the signing of said Jerome treaty certain members of the said Kiowa, Comanche, and Apache tribes learned that the provisions of said treaty had not been correctly and truly translated to them, and that they at once proceeded to make known to the said commissioners that they had been deceived in reference to the provisions of said treaty, and that
9 they desired to withdraw their names from the same; but they were not permitted to do so, but, on the contrary, they were threatened with violence if they persisted in their opposition to said treaty.

That said Kiowa, Comanche, and Apache Indians sent their delegates to Congress at each Congress since 1892, when said Jerome treaty was signed, except to the last or 56th Congress, to protest against the ratification of said treaty; that they would have sent a delegation to Washington during the last Congress had it not been for the fact that they were advised by the United States Indian agent, who was acting in good faith towards said Indians, that the protest against the ratification of said treaty, which was adopted at Mount Scott, on said reservation, October 9th, 1899, and the opposition of the Interior Department to said Jerome treaty would cause Congress to ignore the same, and that it was unnecessary to incur the expense of sending a delegation to Washington to oppose the ratification of said Jerome treaty.

Your orator further represents to your honors that a general council of the Kiowa, Comanche, and Apache tribes of Indians was held at Mount Scott, in said reservation, *in* the 9th day of October, 1899, at which the then Indian agent, Lieutenant Colonel James F. Randlett, of the United States Army, was present; that said Indians had previous to that time obtained the consent of the Secretary of the Interior to hold said general council; that there were present at said general council 571 adult male members of said tribes of Indians; that at their request the said Indian agent prepared a petition to the Commissioner of Indian Affairs, which was duly discussed and understood by all the said Indians who were present, and that each and every one of them signed the same of his
10 own free will, with full knowledge of the purport of his act, as certified by the said Indian agent; that said petition stated in substance that the adult male members of said tribes requested the Commissioner of Indian Affairs to approve their petition and to forward it to the Committees on Indian Affairs of both Houses of Congress; that they prayed that the so-called Jerome treaty, signed in September, 1892, may not be ratified by Congress, because, as alleged in said petition, those who signed that treaty were misled by those who represented the Government, through the interpreters employed by the commissioners appointed to treat with them; that these interpreters led them to believe that if they did not sign said treaty their lands would be taken from them under the provisions of a law called the Dawes law, then in existence, which would be very much more unfavorable to them than was provided in the proposed Jerome treaty; that each and every one of said Indians

solemnly declared in said petition that if they had not been deceived they would never have signed said treaty; that they were not allowed to have any counsel to advise them what was best for them to do; that said petition declared that if said treaty should be ratified said Indians would be doomed to destruction as a people, as other Indian tribes had been, by reason of the prematurely opening of their reservations to the settlement of white men; that their lands were not adapted to agricultural purposes, but would make excellent pastures for grazing cattle, and that said Indians would derive more benefit from this condition than would be derived were their lands thrown open*ed* to settlement by white people who want them for homesteads; that the said Indians derived a revenue from the leasing of their lands for grazing purposes, which, if taken from them at this time, will stop the progress said

11 Indians are making in ways of civilization and blight the hopes they have entertained that the Government would continue to protect their interests until they were fitted to compete with the white men in civilized ways of self-support; that the provisions of said Jerome treaty in reference to the amount of lands to be allotted to each member of the tribes were unsatisfactory, and the amounts to be allotted to each were insufficient for their support on account of the quality of their said lands; that said Indians had kept faith with the Government of the United States, as they pledged themselves to do in the Medicine Lodge treaty of 1868; that they were obedient to the laws of the land; that they are not drunkards, nor do they molest the property of whites who have located on lands adjoining their reservation; that they had placed their children in schools provided by the Government and by Christian societies; that their several schools, having a capacity for 700 pupils, are kept filled with their children, and that these facts were cited as evidence that said Indians are striving in the right way to fit their people for the day, which they realize must soon come, when their children will be dependent upon their own intelligence and physical strength for the support of themselves and their kindred; that said petition closed with the following prayer:

"We therefore pray that, for the reasons we have given herein, we may be heard in this our repudiation of the Jerome treaty, and that Congress will cast it out and not accept it as our free act and deed."

Your orator further represents unto your honors that said petition was duly forwarded by the said Indian agent to the Com-

12 missioner of Indian Affairs, with a certificate to the effect that 571 Indians of said tribes had adopted and signed the same at a general council of said tribes held at Mount Scott, on the Kiowa, Comanche, and Apache Indian reservation, in Oklahoma, on the 9th day of October, 1899, and that the signatures were attached after the subject of the memorial was duly discussed and understood by all the Indians interested, and that each and every one signed of his own free will, with full knowledge of the purport of his act.

That the said Commissioner of Indians Affairs, who was then and now is the aforesaid respondent, William A. Jones, duly received said petition signed, as aforesaid, and forwarded the same to the Secretary of the Interior, in a letter dated January 5, 1900, with a request that it be forwarded to the Committees on Indian Affairs of the Senate and House of Representatives; that in said letter the Commissioner of Indian Affairs called attention to the fact that a bill then pending in Congress proposed to amend said Jerome treaty, and to put it in force without submitting the amendments or the amended treaty to the Indians for their approval, and stated that "it was certainly a novel proposition in law that one party to an agreement may, without the consent of the other, alter or modify an essential part of such contract," and that "it is apparent that no court of law would uphold or enforce any contract so altered or amended." The said Commissioner then pointed out the fact that in all our dealings with the Indian tribes no instance was found where an agreement had ever been amended by Congress without providing for the assent of the Indians interested. The said Commissioner then proceeded in his said letter to point out the many grave objections he entertained to said Jerome treaty, and
13 submitted his conviction that said Jerome treaty, in the form in which it was presented, should be rejected by Congress.

Your orator further represents to your honors that all the statements in the said petition of the Kiowa, Comanche, and Apache tribes of Indians, adopted and signed at Mount Scott, October 9th, 1899, are true; that he was present at said general council, and of his own knowledge states that all the said Indians are opposed to the said Jerome treaty, and that they utterly repudiated the same as never having been agreed to by them; that the report of the Secretary of the Interior as to the number of male adult members of said tribes at the time said Jerome treaty was signed is substantially correct, and that 571 adult male members signed said petition, which is more than three-fourths of all the adult male members of said tribes.

Your orator further represents unto your honors that he does not speak the English language, and that but few of the members of said Indian tribes can either speak or understand said language, that they wholly depended upon the interpreters, who were selected by the said commission representing the United States, for a correct understanding of the provisions of the said Jerome treaty; that your orator and the other members of said confederated tribes of Indians are regarded as wards of the nation, and that the officials of the United States charged with the duty of administering Indian affairs are regarded as their guardians; that in the formulation and signing of the said Jerome treaty they relied implicitly upon the honesty and good faith of the said commission and their interpreters, and at the time they signed the said treaty they believed that said treaty fully and faithfully represented their wishes; but soon after signing the said treaty the said Indians discovered that
14 they had been deceived, imposed upon, and defrauded by their alleged guardians and protectors. Your orator there-

fore humbly prays that your honors will take these facts into consideration in granting the relief prayed for herein to your orator and the other members of the said confederated tribes of Indians.

Your orator further represents unto your honors that the price to be paid for the surplus lands belonging to said Kiowa, Comanche, and Apache Indians under the provisions of the said Jerome treaty is far below the real value of said surplus lands; that when said treaty was being considered by said Indians the interpreters stated to said Indians that said treaty provided for the sale of their surplus lands at some time in the future at the price of $2.50 per acre, which would amount to five million dollars for said two million acres of surplus lands, but by the terms of said treaty only one dollar an acre is allowed for said surplus lands, an amount so far below the real value of said lands as to require a court of equity, administering the law applicable to guardians and wards, to set aside the sale as contrary to equity and good conscience.

Your orator further represents unto your honors that the said Jerome treaty was ratified by Congress on the 6th day of June, 1900, notwithstanding the said petition of 571 adult male members of said tribes, so adopted at a general council of said tribes in October, 1899, eight months prior to the act of Congress ratifying the said Jerome treaty; that before ratifying the said treaty Congress amended the same in several important and material particulars, as will more fully appear by a comparison of the following portions of the texts of the said Jerome treaty as signed by the said Indians, as aforesaid, and the text as ratified by Congress:

15 *Article I, first part, as signed:*

"Subject to the allotment of land in severalty to the individual members of the Comanche, Kiowa, and Apache tribes of Indians in the Indian Territory, as hereinafter provided for, and subject to the conditions hereinafter imposed, and for the considerations hereinafter mentioned, the said Comanche, Kiowa, and Apache Indians hereby cede, convey, transfer, relinquish, and surrender, forever and absolutely, without any reservation whatever, express or implied, all their claim, title, and interest, of every kind and character, in and to the lands embraced in the following-described tract of country in the Indian Territory, to wit:" (Senate Ex. Doc. No. 17, 2d ses., 52d Cong.).

As ratified by Congress:

"Subject to the allotment of land, in severalty to the individual members of the Comanche, Kiowa, and Apache tribes of Indians in the Indian Territory, as hereinafter provided for, *and subject to the setting apart as grazing lands for said Indians, four hundred and eighty thousand acres of land as hereinafter provided for*, and subject to the conditions hereinafter imposed, and for the considerations hereinter mentioned, the said Comanche, Kiowa, and Apache Indians hereby cede, convey, transfer, relinquish, and surrender, forever and absolutely, without any reservation whatever, express or implied,

all their claim, title, and interest, of every kind and character, in and to the lands embraced in the following-described tract of country in the Indian Territory, to wit:"

Article III, as signed:

"It is further agreed that the land in said reservation shall be classed as grain-growing and grazing land; and in making selection of lands to be allotted in severalty as aforesaid, each and every Indian, herein provided for, shall be required to take at least
16 one-half in area, of his or her allotments, of grazing land."

As ratified by Congress:

"That in addition to the allotment of lands to said Indians as provided for in this agreement, the Secretary of the Interior shall set aside for the use in common for said Indian tribes four hundred and eighty thousand acres of grazing lands, to be selected by the Secretary of the Interior, either in one or more tracts as will best subserve the interest of said Indians."

Article VI, 1st paragraph, as signed:

"As a further and only additional consideration for the cession of territory and relinquishment of title, claim, and interest in and to the lands as aforesaid, the United States agrees to pay to the Comanche, Kiowa, and Apache tribes of Indians, in the Indian Territory, the sum of two million ($2,000,000) dollars, as follows: Two hundred thousand ($200,000) dollars in cash, to be distributed *per capita*, among the members of said tribes within one hundred and twenty (120) days after this agreement shall be ratified by the Congress of the United States; two hundred thousand ($200,000) dollars to be paid out to said Indians under the direction of the Secretary of the Interior in one year after said first payment, and one hundred thousand ($100,000) dollars in the same manner in one year from date of second payment, and the remaining one million and five hundred thousand ($1,500,000) dollars to be retained in the Treasury of the United States, placed to the credit of said Indians, and while so retained, to draw interest at the rate of five per centum per annum, to be paid to the said Indians *per capita* annually."

As ratified by Congress:

"As a further and only additional consideration for the
17 cession of territory and relinquishment of title, claim, and interest in and to the lands as aforesaid, the United States agrees to pay to the Comanche, Kiowa, and Apache tribes of Indians, in the Indian Territory, the sum of two million ($2,000,000) dollars, as follows: Five hundred thousand ($500,000) dollars to be distributed *per capita* to the members of said tribes at such times and in such manner as the Secretary of the Interior shall deem to be for the best interests of said Indians, which sum is hereby appropriated out of any funds in the Treasury not otherwise appropriated; and any part of the same remaining unpaid shall draw interest at the

rate of five per centum while remaining in the Treasury, which interest shall be paid to the Indians annually *per capita;* and the remaining one million five hundred thousand ($1,500,000) dollars to be retained in the Treasury of the United States, placed to the credit of said Indians, and while so retained to draw interest at the rate of five per centum per annum, to be paid to the said Indians *per capita* annually."

And in article X, as signed, there appeared the names of H. L. Scott and George D. Day, "friends of said Indians," who were to have all the benefits of sharing equally with the Indians in the lands of the tribe. Their names do not appear in the text of the treaty as ratified by Congress.

Your orator further represents unto your honors that the act of Congress which purported to ratify the said Jerome treaty shows upon its face that said treaty was amended by Congress, the ratifying clause being as follows:

"Said agreement be, and the same hereby is, accepted, ratified, and confirmed *as herein amended.*"

18 The said act of Congress ratifying said treaty is entitled "An act to ratify an agreement with the Indians of the Fort Hall Indian reservation, in Idaho, and making appropriations to carry the same into effect." (See Session Laws, first session, 56th Congress, page 672.) There was no reference in the title to the provisions amending and ratifying the said Jerome treaty.

Your orator further represents unto your honors that the said act of Congress ratifying said Jerome treaty provided as follows:

"That should any of said lands allotted to said Indians, or opened to settlement under this act, contain valuable mineral deposits, such mineral deposits shall be opened to location and entry, under the existing mining laws of the United States, upon the passage of this act, and the mineral laws of the United States are hereby extended over said lands."

From which said provision it appears that even after allotments are made to said Indians and accepted by them such lands so allotted may at any time thereafter be taken from the allottees without compensation and given to the locators of mining claims if valuable mineral deposits should at any time in the future be found on such lands. Said provision was not contained in the treaty as signed, and will result when invoked in the confiscation of the property of said Indians who may be so unfortunate as to accept an allotment upon land which may hereafter be found to contain valuable mineral deposits.

Your orator further represents unto your honors that the said act of Congress ratifying the said Jerome treaty contained a provision which conferred upon the Court of Claims of the United States

19 jurisdiction to hear and determine the claim of the Choctaw and Chickasaw nations to the lands embraced in said Jerome treaty, with right of either party to appeal to the Supreme Court of the United States, and that should a final judgment or decree be entered in said action that the Choctaw and Chickasaw nations have

any right, title, or interest in or to said lands for which they should be compensated by the United States, then the said sum of $1,500,000, mentioned in article VI of said Jerome treaty, "shall be subject to such legislation as Congress may deem proper."

Your orator further represents to your honors that said provision last above quoted was not incorporated in the original Jerome treaty, and that the same has never received the approval of said Indians; that under said provision the said Indians may never receive any compensation whatever for said two million acres of land; that said provision may deprive the said Indians of two million acres of their lands without their consent, either express or implied, and to their great wrong and oppression; that the said Indians know nothing of the merits of the claim of said Choctaw and Chickasaw nations to said lands; that no intimation was given to said Indians when they concluded the Medicine Lodge treaty of 1868 that the title of the United States to the lands ceded to them by said treaty was clouded in any way, but, on the contrary, the said Indians then believed that the title to said lands was free from the claims of all other Indian nations and of all other persons, and that the United States had full right to convey said lands to said Indians by a perfect and unassailable title; that by the second article of said Medicine Lodge treaty of 1868 said lands were "set apart for the absolute and undisturbed use and occupation of the said tribes," and the United States solemnly agreed that no persons except those authorized so to do "shall ever be permitted to pass over, settle upon, or reside in the territory described in this article."

Your orator further represents to your honors that at the second session of the 56th Congress an act was passed and approved March 3, 1901, entitled "An act to supplement existing laws relating to the disposition of lands, and so forth" (see Session Laws, 1st session, 56th Congress, pp. 1093–'4); that said act provided that it should be the duty of the Secretary of the Interior to subdivide the lands embraced in said Jerome treaty, which were ceded to the United States by the provisions thereof, into such number of counties as will, for the time being, best subserve the public interests, and to designate county-seats on said lands, and that said lands be surveyed, subdivided, and platted, under the direction of the Secretary of the Interior, into appropriate lots, blocks, streets, alleys, and sites for parks or public buildings, so as to make a town site thereof; that the said lands should also be opened to settlement by white men by proclamation of the President, which proclamation shall prescribe the manner in which these lands may be settled upon, occupied, and entered by persons entitled thereto under the act of Congress ratifying said Jerome treaty; that said act of June 6, 1900, ratifying said treaty, provided for the allotment of land to each member of said Kiowa, Comanche tribes of Indians, and that the lands not allotted or set apart for pasture lands, embracing about two million acres, shall be opened to settlement by white people under the general provisions of the homestead and town-site laws of the United States, with certain provisos set forth in said act, and that the said Secretary of the

Interior, by the provisions of said act and a supplemental act of Congress (urgent deficiency act of Jan. 4, 1901, Sess. Laws,
21 2d sess., 56th Cong., 727), was authorized to extend the time for making allotments and opening of the said lands to settlement for a period not exceeding eight months from the sixth day of December, nineteen hundred; that said period will expire on the sixth day of August, 1901.

Your orator further represents unto your honors that so much of said act of Congress of June 6, 1900, and so much of said acts supplementary thereto and amendatory thereof as provide for the ratification of said Jerome treaty, the allotment of certain lands mentioned therein to members of said Indian tribes, the surveying, laying out, and platting town sites and locating county-seats on said lands, and the ceding to the United States and the opening to settlement by white men of two million acres of said lands, were enacted in violation of the property rights of the said Kiowa, Comanche, and Apache Indians, and if carried into effect will deprive said Indians of their lands without due process of law, and that said parts of said acts are contrary to the Constitution of the United States and are void and confer no right, power, or duty upon the said Secretary of the Interior or upon the said Commissioner of Indian Affairs or upon the said Commissioner of the General Land Office, the respondents in this cause, to do or perform any of the acts or things enjoined or required by said pretended acts of Congress, for the following reasons:

First. That the said Indians were induced to sign the said treaty by false and fraudulent translations, and that none of those who signed said treaty understood its provisions.

Second. That by the provisions of the Medicine Lodge treaty no part or portion of said lands could be ceded or alienated without the consent of three-fourths of the male adult members of said tribes, and that three-fourths of such male adults have never signed said Jerome treaty or any other treaty or agreement by
22 which they ceded or alienated any portion of their said lands.

Third. That eight months prior to the time Congress pretended to ratify said Jerome treaty 571 adult male members of said tribes, which were more than three-fourths of such number, met in general council, with the approval of the Secretary of the Interior and the Indian agent, at Mount Scott, in said reservation, and solemnly repudiated the said treaty and prayed Congress "to cast it out and not accept it as their free act and deed."

Fourth. That in the act of Congress pretending to ratify said Jerome treaty numerous amendments, changing important provisions of said treaty, were made by Congress, and that said treaty was attempted to be put in force without submitting said amendments or the treaty as thus amended to the approval of said Indians.

Your orator further represents unto your honors that notwithstanding the said acts of Congress so set forth, as aforesaid, are un-

constitutional and void and impose no duties or authority whatever upon the respondents to enforce said void statutes, yet your orator is informed and believes that said respondents are now engaged in carrying said void acts into effect, and thereby threatening the said Indians with the loss of their property and of their lands, in violation of the Constitution of the United States and the solemn treaty provisions by which they acquired said lands, and unless restrained by this honorable court the said respondents will cause irreparable injury, wrong, and oppression to and the deprivation of the property rights of your orator and all the other members of said confederated tribes of Indians.

To the end, therefore, that the said respondent- may, if they can, show why your orator should not have the relief hereby and herein prayed for and may, upon their several and respective corporal oaths and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make to such of the several interrogations hereinafter numbered and set forth as by the note herein underwritten they are respectively required to answer—that is to say:

23

1. Whether it is not true that the signatures of said Kiowa, Comanche, and Apache Indians, which are signed to said Jerome treaty, were procured to be signed by wilful misrepresentations and false translations to the said Indians by the interpreters, and whether the agents and employés of the United States and the Indians have not officially informed the said respondents that such is the fact, and whether the official reports of the Secretary of the Interior do not attest such fact?

2. Whether it is not true that the whole number of adult male members of said tribes of Indians was at the time of the signing of said Jerome treaty 629, and that three-fourths of that number of adult male members of said tribes never signed said Jerome treaty?

3. Whether it is not true that 571 adult male members of said tribes of Indians met at Mount Scott, on said reservation, in October, 1899, eight months prior to the pretended ratification of said Jerome treaty by Congress, and then and there, in general council of said tribes, solemnly repudiated said treaty and prayed Congress to cast it out and not accept it as their free act and deed?

4. Whether or not it is true that Congress adopted a number of amendments to said treaty in the act ratifying the same, and that neither said amendments nor the treaty as thus amended were *were* submitted to said Indians for their approval?

24

Your orator prays that the said Ethan A. Hitchcock, William A. Jones, and Binger Hermann, their counselors, attorneys, or agents, may be restrained, by an injunction issuing out of this court, from proceeding further against your orator and against the said Kiowa, Comanche, and Apache Indians, and especially from proceeding further in allot-ing any of said lands to said Indians, in surveying, laying out, and platting town sites and county-seats on said lands,

and from opening any of said lands to settlements by white people, and generally from doing or from performing any of the acts or things required by said void acts of Congress, and that your orator and the said Kiowa, Comanche, and Apache tribes of Indians shall have generally such other and further relief as the nature of this case may require.

And may it please your honors to grant unto your orator the writ of injunction issuing out of and under the seal of this court, directed to the said Ethan A. Hitchcock, William A. Jones, and Binger Hermann, their counselors, attorneys, solicitors, and agents, and all other officers, clerks, agents, and employés of the Government of the United States acting under the orders and instructions of the said respondents, commanding them and each of them absolutely to desist and refrain from proceeding further against your orator and against the said Kiowa, Comanche, and Apache Indians in the carrying into effect of said void acts of Congress as set forth in said action, as above.

And your orator further represents unto your honors that he and the other members of said Indian tribes in whose behalf this
25 suit is brought are wholly without remedy at law, and that the relief prayed for herein must be granted at once; otherwise your orator and the other members of said Indian tribes will sustain irreparable injury and loss of property of immense value heretofore conveyed to them by the United States by solemn treaty obligations. Your orator therefore prays your honors to grant unto your orator, pending a final hearing of this cause, a temporary injunction, directed to said respondents aforesaid, issued as aforesaid, restraining them, their counselors, attorneys, solicitors, and agents, and all other officers, clerks, agents, and employés of the United States acting under the orders and instructions of said respondents, commanding them and each of them to absolutely desist and refrain from doing any of the acts and things complained of, as herein set forth, and especially from proceeding further in the carrying into effect of the provision of said void acts of Congress and granting your orator temporarily such other and further relief as the nature of this case may require.

And upon a final hearing of said cause your orator prays that said injunction may be made perpetual, and that said respondents pay the costs in this suit.

Therefore will your honors grant unto your orator the writ of subpœna, issuing out of and under the seal of this court, to be directed to said respondents, Ethan A. Hitchcock, William A. Jones, and Binger Hermann, commanding them and each of them, by a certain day and under a certain penalty therein inserted, to appear before your honors in the court aforesaid, and then and there answer the premises and abide the order and decree of the court.

26 WILLIAM M. SPRINGER,
Solicitor for Complainant.

NOTE.—The respondent Ethan A. Hitchcock and the respondent William A. Jones are each required to answer the interrogatories numbered respectively 1, 2, 3, and 4.

The respondent Binger Hermann is not required to answer any of said interrogatories.

Affidavit.

Personally appeared before me, the undersigned, notary public within and for the District of Columbia, Lone Wolf, who, being duly sworn, deposeth and saith that the facts set forth in the within complaint are true; and further he saith not.

[SEAL.] B. H. LYON,
Notary Public.

27 *Rule.*

Filed Jun- 6, 1901.

In the Supreme Court of the District of Columbia.

LONE WOLF ET AL.
vs.
THE SECRETARY OF THE INTERIOR ET AL. } No. 22338. Equity.

Upon consideration of the bill in the above-entitled cause, it is, this 6th day of June, A. D. 1901, ordered that the defendants show cause, if any they have, on the 12th day of June, 1901, at eleven (11) o'clock a. m., why temporary injunction should not be granted as therein prayed, provided a copy of this order be served upon said defendants on or before the 8th day of June, 1901.

A. C. BRADLEY, *Justice.*

Marshal's Return.

Served copy of within order on Thomas Ryan, acting Secretary of the Interior, June 8, 1901.

AULICK PALMER, *Marshal.*
B.

28 *Affidavit of E. A. Hitchcock.*

Filed Jun- 12, 1901.

In the Supreme Court of the District of Columbia.

LONE WOLF, ETC., Complainant,
vs.
ETHAN A. HITCHCOCK, Secretary of the Interior, *et al.*, Respondents. } No. 22338, Doc. 50. In Equity.

Affidavit of Ethan A. Hitchcock in opposition to temporary injunction.

UNITED STATES OF AMERICA,
District of Columbia, } *ss:*

Ethan A. Hitchcock, being first duly sworn, upon his oath doth depose and say that he is the Secretary of the Interior, and has been

such Secretary since the 20th day of February, 1899; that as such Secretary he is respondent in the above-entitled suit; that heretofore the complainant, Lone Wolf, A-kei-quodle, his wife, and Ah-tape, his daughter, by virtue of section 6 of the act of Congress approved June 6, 1900 (31 Stat., 672, 676), entitled "An act to ratify an agreement with the Indians of the Fort Hall Indian reservation, in Idaho, and making appropriations to carry the same into effect," and by virtue of that portion of the act of Congress approved January 4, 1901 (31 Stat., 727), entitled "An act making appropriations to supply urgent deficiencies in the appropriations for the fiscal year ending June thirtieth, nineteen hundred and one, and for other purposes," which authorized the Secretary of the Interior to extend the time for making allotments in severalty to the Indians under section 6 of the last-named act, being respectively members
29 of the Kiowa tribe of Indians, did severally and regularly select and take for themselves, in the manner provided in section 6 of the said act of June 6, 1900, from the lands therein described and thereby ceded to the United States, 160 acres each, to be held and owned by them in severalty as allotments; that thereafter and on the 23rd day of May, 1901, these three allotments were regularly approved by the Secretary of the Interior under section 6 of said act of June 6, 1900; that heretofore each and every member of the Comanche, Kiowa, and Apache tribes of Indians, excepting not more than 12 of said Indians—those over 18 years of age acting for themselves, and those under that age acting through their father, mother, or an allotting agent appointed for the purpose by the Commissioner of Indian Affairs—did regularly select and take for himself or herself, in the manner provided in section 6 of the said act of June 6, 1900, and by virtue thereof, from the lands therein described and thereby ceded to the United States, 160 acres, to be held and owned by him or her in severalty as an allotment; that the total number of allotments so selected and taken is 2,759; that of the allotments so selected and taken 2,503 were regularly approved from time to time by the Secretary of the Interior under section 6 of said act of June 6, 1900, before the service of process in this suit, and the remainder thereof are now in course of transmission from the allotting agent, through the Commissioner of Indian Affairs, to the Secretary of the Interior, for approval; that the allotments heretofore approved, as aforesaid, include allotments selected and taken by more than three-fourths of all the adult male Indians occupying the lands so as aforesaid ceded to the United States; that each and every of said allotments was so
30 selected and taken in conformity to section 6 of the said act of June 6, 1900, and not otherwise; that not one of said Indians has surrendered or attempted to surrender his allotment so selected and taken as aforesaid; that heretofore and on April 22, 1901, in addition to the allotment of lands to said Indians, as aforesaid, the Secretary of the Interior, acting in pursuance of section 6 of said act of June 6, 1900, did select and set aside for the use in common of the Comanche, Kiowa, and Apache Indian tribes from

the lands described in said section approximately 480,000 acres of grazing lands believed by him to best subserve the interests of said Indians; that said grazing lands were so selected and set aside with the approval of a council composed of the chiefs and head men of said Indians; that by reason of accepting, as aforesaid, the benefits of the agreement and cession set forth in section 6 of the said act of June 6, 1900, this affiant submits that said Comanche, Kiowa, and Apache tribes of Indians, including the complainant Lone Wolf, have assented to and ratified the said agreement in cession, as set forth in said section; that in respect to the action of the Secretary of the Interior herein recited this affidavit is made from the personal knowledge of the affiant, and that as to the other matters herein recited it is based upon the information which affiant has obtained from the reports of subordinate officers in the Indian service, allotting lists, papers, and records which have passed under his observation and supervision as Secretary of the Interior in the course of transacting the official duties devolving upon him in the execution of section 6 of the said act of June 6, 1900, and other acts supplemental thereto, and that affiant believes all of the matters
31 herein recited to be true.

E. A. HITCHCOCK.

Subscribed in my presence and sworn to before me this 12th day of June, 1901.

W. BERTRAND ACKER,
[SEAL.] *Notary Public in and for D. C.*

32 *Affidavit of Lone Wolf.*

Filed June 13, 1901.

In the Supreme Court of the District of Columbia.

LONE WOLF, ETC., Complainant, *v.* ETHAN A. HITCHCOCK, Secretary of the Interior, *et al.*, Respondents.	No. 22338, Doc. 50. In Equity.

UNITED STATES OF AMERICA, *District of Columbia*, } *ss:*

Lone Wolf, the complainant in the above-entitled case, being duly sworn, deposes and says that he has not accepted an allotment of land under the act of Congress approved June 6, 1900, and the acts supplement- to and amendatory thereof; that he is occupying certain lands in the Kiowa, Comanche, and Apache reservation in Oklahoma, and he assumes that the lands occupied by him will be allotted to him whenever a legal allotment is made.

But affiant asserts that by no act of his own has he ever recognized the validity of the so-called Jerome treaty, and that he is informed and believes that substantially all of the members of the said Indian tribes, the Kiowas, Comanches, and Apaches, are opposed to

the said Jerome treaty, and that they have not done or performed any act which they regard as a ratification of said Jerome treaty; that affiant is informed and believes the fact to be true that 458 members of said tribes have within ten days last past signed a
33 petition to the President of the United States, praying him to withhold his proclamation opening the lands mentioned in said Jerome treaty to settlement by white men, and in which petition said Jerome treaty is repudiated as an act of injustice, spoliation, and robbery; that your affiant is informed and believes that a delegation representing said tribes has been appointed to bring said petition to Washington, and that said delegation is now on its way to this city; that said delegation is authorized to present said petition to the President and to make known to him and to the respondents in this case that the said Indians have never given their consent to or approval of the so-called Jerome treaty; that the signatures were procured by false translations; that three-fourths of the adult male members of said tribes never signed said treaty, and that all of said Indians have repeatedly repudiated the same; that said delegation will come with authority of 458 adult male members of said tribes, to use all means in their power to prevent the carrying into effect of said fraudulent treaty, and especially to resort to all legal means that may be deemed necessary to that end; that affiant is informed and believes that said delegation will arrive in this city on tomorrow, June 14th.

And further deponent saith not.

his
LONE x WOLF.
mark.

1901, June 13.—Mark made and sworn to before me and explained by Interpreter James Waldo.

Test:
[SEAL.]

JOHN R. YOUNG, *Clerk, &c.*,
By R. J. MEIGS, JR., *Ass't Clerk.*

31 *Motion for Leave to Amend Bill.*

Filed Jun- 17, 1901.

In the Supreme Court of the District of Columbia, June Term, 1901.

LONE WOLF, Who Sues as Well for Himself as All Other Members of the Confederated Tribes of the Kiowa, Comanche, and Apache Indians Residing in the Territory of Oklahoma, Complainant,	No. 22338, Doc. 50. In Equity.
v.	
ETHAN A. HITCHCOCK, Secretary of the Interior; WILLIAM A. JONES, Commissioner of Indian Affairs, and Binger Hermann, Commissioner of the General Land Office, Respondents.	

Now comes Lone Wolf, the complainant in the above-entitled cause, and moves the court for leave to amend his bill of complaint

by making the following-named members of the Kiowa, Comanche, and Apache tribes of Indians, in the Territory of Oklahoma, parties plaintiff with himself in said bill of complaint, namely:

Eshitie, principal chief of the Comanches;
White Buffalo,
Ko-Koy-Taudle,
Mar-Mo-Sook-Car-Wer,
Narwats,
Too-Wi-Car-Ne,
William Tivis, and
Delos K. Lonewolf.

And that the first paragraph of said bill of complaint be
35 amended so as to read as follows:

Your orators, Lone Wolf, principal chief of the Kiowa tribe of Indians; Eshitie, principal chief of the Comanches tribe of Indians; White Buffalo, Ko-Koy-Taudle, Mar-Mo-Sook-Car-Wer, Narwats, Too-Wi-Car-Ne, William Tivis, and Delos K. Lonewolf, all members of the Kiowa, Comanche, and Apache confederated tribes of Indians, residing in the Territory of Oklahoma, and delegates duly appointed by said tribes at a general council of said tribes held at Anadarko, on the Kiowa, Comanche, and Apache Indian reservation, in said Territory of Oklahoma, on the 3*th*, 4th, 5th, 6th, and 7th days of June, 1901, and authorized to represent said tribes in the city of Washington in the matter of preventing the wrongs and injuries to said tribes complained of in this their bill of complaint and duly authorized by said tribes in general council, as aforesaid, to resort to all legal means that they may deem necessary to prevent the opening of their lands to settlement by white people and to prevent other wrongs and injuries against them as hereinafter set forth in this their bill of complaint, and who sue as well for themselves as all other members of the said confederated tribes of Kiowa, Comanche, and Apache Indians by the authority aforesaid, respectfully represent that they now are and always have been members of the Kiowa, Comanche, and Apache tribes of Indians so residing in the said Territory of Oklahoma, and that all of said tribes are now united or confederated into one tribe with the consent and approval of the United States and of each of said tribes respectively, and that for the purpose of dealing with the authorities of the United States the said tribes are treated as one tribe and hold general councils for
said confederated tribes, and for the purpose of transacting the
36 business especially pertaining to each tribe respectively they
each keep up their tribal organizations in said Territory and have so kept *them* up said tribal organizations in said Territory for many years for the transaction of all the business of said tribes, and in respect to their lands, which are held in common, said tribes treat with the Government of the United States as one confederated tribe, having a grand council of the adult male members of said tribes for the transacting of all business of said tribes with the United States.

That the grand council of all of said tribes, held, as -foresaid, at

the time and place aforesaid, did authorize, in the only manner known to said tribes, the institution of any suit that said delegates might deem necessary for the purpose of preventing the wrongs and injuries against said Indians as set forth in their said bill of complaint.

And that the other provisions of said bill of complaint be so amended that the word "orator" and the words "he" and "himself" and the verbs to which all of said words relate be changed from the singular to the plural number.

W. M. SPRINGER,
Solicitor for Complainant.

Personally appeared before me, R. B. H. Lyon, a notary public, Delos K. Lonewolf, interpreter to Lone Wolf, complainant in the above-entitled cause, who solemnly swears that he has interpreted the foregoing amended bill of complaint truly and accurately as set forth in said bill — complaint, having read the same first and then informed the complainant of the contents in the complainant's native Indian language.

DELOS K. LONEWOLF.

Subscribed and sworn to on this 15th day of June, A. D. 1901.

[SEAL.]

R. B. H. LYON,
Notary Public.

Also personally appeared before me, R. B. H. Lyon, a notary public, Lone Wolf, the complainant in the above-cited bill of complai*nant*, who, after having the aforesaid bill of complaint explained to him by Delos K. Lonewolf, his interpreter, in his native Indian language, swears that the statements made therein upon his personal knowledge he knows to be true, and that those made therein upon his information and belief he believes to be true.

his
LONE WOLF. x
mark.

Subscribed and sworn to on this 15 day of June, A. D. 1901.

[SEAL.]

R. B. H. LYON,
Notary Public.

37 *Petition for Leave to be Made Parties Complainant.*

Filed June 17, 1901.

In the Supreme Court of the District of Columbia, June Term, 1901.

LONE WOLF, Who Sues as Well for Himself as All Other Members of the Confederated Tribes of the Kiowa, Comanche, and Apache Indians Residing in the Territory of Oklahoma, Complainant,
v.
ETHAN A. HITCHCOCK, Secretary of the Interior; WILLIAM A. JONES, Commissioner of Indian Affairs, and BINGER HERMANN, Commissioner of the General Land Office, Respondents.

No. 22338. Doc. 50. In Equity.

To the honorable the chief justice and the associate justices of the supreme court of the District of Columbia:

The undersigned respectfully represent unto your honors that they, together with Lone Wolf, the complainant in the above-entitled cause, were, as a general council of the Kiowa, Comanche, and Apache tribes of Indians, held at Anadarko, in the Territory of Oklahoma, on the 3d, 4th, 5th, 6th, and 7th days of June, 1901, appointed delegates to represent said tribes in the city of Washington; that the resolution by which they were so appointed is in words and figures as follows:

Resolved, That Lone Wolf, principal chief of Kiowas;
Eshitie, principal chief of Comanches;
White Buffalo,
Ko-Koy-Taudle,
Mar-Mo-Sook-Car-Wer,
Narwats,
Too-Wi-Car-Ne,
William Tivis,
Delos K. Lonewolf,

be, and they are hereby, appointed delegates to represent the Kiowa, Comanche, and Apache Indians in the city of Washington; that they are authorized to select not exceeding three interpreters to accompany them on their mission; that the subsistence and traveling expenses of said delegates and their interpreters shall be paid out of the funds belonging to the tribes; that the Commissioner of Indian Affairs at Washington is authorized and directed to pay the accounts of said delegates and interpreters upon vouchers fur-
38 nished him, and to charge the amounts thus paid to our tribal funds.

That it shall be the duty of said delegates and interpreters to proceed at once to the city of Washington and there to present to

our Great Father, the President of the United States, our memorial adopted this day and to make known to him and to the Secretary of the Interior and the Commissioner of Indian Affairs, to the Congress of the United States, and to all other officials of the United States, that we, the Kiowa, Comanche, and Apache tribes of Indians, in the Territory of Oklahoma, have never given our consent to or approval of the so-called Jerome treaty, which Congress, on the 6th day of June, 1900, ratified and declared to be in force; that the signatures to said treaty were procured by willful misrepresentation and false translation; that three-fourths of the adult male members of the tribes never signed said treaty, as is required by our existing treaties; that 571 adult male members of said tribes out of a total membership of 639, eight months before Congress ratified it, repudiated it in a general council, at Mount Scott, October 9th, 1899, and that Congress amended said treaty in many material and important particulars and put it in force without submitting the amended treaty to the said tribes for their approval.

That our said delegates are authorized to secure the services of able lawyers to assist them in all their efforts in said city of Washington to prevent the carrying into effect of said fraudulent treaty, and they are authorized to resort to all legal means that they may deem necessary to that end; that the Secretary of the Interior and the Commissioner of Indian Affairs be, and they are hereby, authorized and requested to approve the contracts which may be made by our delegates for the employment of attorneys to represent
39 our said tribes in all matters in said city of Washington and to allow a just and liberal compensation for their services, to be paid out of the funds of the tribes; that our said delegates and the attorneys employed by them shall continue to represent our said tribes in Washington before the Great Father, the departments of the Government, and the Congress until said fraudulent treaty shall be repudiated by Congress or submitted to us as amended by Congress for the approval of our tribes.

That the undersigned, with the exception of White Buffalo and Ko-Koy-Taudle, were present at said general council of said tribes of Indians; that said resolution was fully interpreted and explained to all the members of said tribes who were present, numbering 454 adult male members of said tribes, and that all of them approved said resolution and signed the same, together with a memorial addressed to the President of the United States.

The undersigned respectfully represent unto your honors that said resolution represents substantially the sentiments and wishes of all the members of said tribes, except a few of the white men, who were adopted into the tribe by the so-called Jerome treaty of 1892; that the entire lawful membership of said tribes is opposed to the said Jerome treaty, and especially opposed to the opening of any of their lands to settlement by white people; that they have never accepted allotments of their lands to the extent of approving said allotments; that they were told by allotting agents that they must select land to be allotted to them or said agents would make the se-

lections, which might be on poor land, and that they would be obliged to accept whatever allotments might be assigned to them; that by no act or acts of said Indian tribes have they approved said Jerome treaty, and that but for the active opposition of the United States Indian agent at said Indian agency, and the threats and intimidations resorted to to prevent the Indians from participating in said council proceedings, all the adult male members would have participated in said council and approved said resolution and the memorial to the President which was adopted.

The undersigned, therefore, respectfully request your honors to permit them to be impleaded with the said Lone Wolf as parties plaintiff in the above-entitled cause, and that they may be permitted, together with said Lone Wolf, to prosecute said suit, as well for themselves as for all other members of said tribes of Indians, who are too numerous to be named in said bill of complaint; that said bill of complaint has been interpreted and explained to them, and that the facts therein stated are true to their personal knowledge in so far as they were cognizant thereof, and in so far as they are historical or based upon official documents they believe them to be true.

his
ESHITIE, x
mark.
Principal Chief of Comanches.
his
WHITE BUFFALO. x
mark.
KO KOY TAUDLE.
his
MAR-MO-SOOK-CAR-WER. x
mark.
his
NAR-WATS. x
mark.
his
TOO-WI-CAR-NE. x
mark.
WILLIAM TIVIS.
DELOS K. LONEWOLF.

Subscribed and marks made and sworn to before me June 15, 1901.

[SEAL.] JOHN R. YOUNG, *Clk, &c.*,
By R. J. MEIGS, JR., *Ass't Clk.*

41 *Order Allowing Complainant to Amend Bill.*

Filed June 18, 1901.

In the Supreme Court of the District of Columbia.

LONE WOLF, Complainant,
vs.
ETHAN A. HITCHCOCK ET AL., Defendants.
} No. 22338. In Equity. Doc. 50.

Upon consideration of the motion of complainant for leave to amend his bill of complaint, heretofore filed herein, after argument by counsel for the respective parties and consideration by the court, it is, this 18th day of June, A. D. 1901, ordered that the complainant be, and he hereby is, allowed to amend the said bill by making new parties complainant as in said motion set forth.

A. C. BRADLEY, *Justice.*

42 *Order Denying Application for Temporary Injunction.*

Filed June 21, 1901.

In the Supreme Court of the District of Columbia.

LONE WOLF, ETC., Complainants,
v.
ETHAN A. HITCHCOCK, Secretary of the Interior, *et al.*, Respondents.
} No. 22338, Docket 50. In Equity.

Come now the parties to this cause, by their respective solicitors, and the cause having heretofore been submitted to the court upon the application of the complainants for a temporary injunction, as prayed for in the bill of complaint, and the court, being duly advised in the premises, does now consider, order, and decree that the complainants' application and prayer for a temporary injunction, pending the final hearing, be, and the same is hereby, denied. Whereupon the complainants give notice of their intention to apply by petition to the Court of Appeals in the District of Columbia for the allowance of an appeal from this order.

Dated June 21, 1901.

A. C. BRADLEY, *Justice.*

43 *Opinion of Court.*

Filed June 21, 1901. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia.

LONE WOLF ET AL., Who Sue as Well for Themselves as for All Other Members of the Kiowa, Comanche, and Apache Confederated Tribes of Indians,
vs.
ETHAN A. HITCHCOCK, Secretary of the Interior; William A. Jones, Commissioner of Indian Affairs, and Binger Hermann, Commissioner of the General Land Office.
} In Equity. No. 2238.

WASHINGTON, D. C.,
THURSDAY, *June 20th*, 1901—1 o'clock p. m.

Opinion of Mr. Justice Bradley.

In the case of Lone Wolf *vs.* Ethan A. Hitchcock, Secretary of the Interior, and others, which was heard upon an application for a preliminary injunction, it is alleged by the bill that the complainant is a member of the Kiowa tribe of Indians, which is united with the Comanche and Apache tribes, and resides with such confederated tribes in the Territory of Oklahoma, where he has resided since the year 1868. He brings this suit for himself and for all other members of the confederated tribes residing in that Territory. He alleges that these tribes had set apart for their absolute and undisturbed use and occupation three million acres of land under treaties proclaimed August 25, 1868, which they are at
44 present occupying, but that their possession is threatened to be disturbed by the defendants in the enforcement of the provisions of an act of Congress approved June 6, 1900; that this act of Congress is unconstitutional and void because it will deprive the confederated tribes of their lands without their consent and against their protest; that it purports to ratify a prior agreement, made and signed by commissioners on the part of the United States and by 456 Indians, dated October 6, 1892, but the agreement has been amended and changed in material respects by the statute; that the changes had not been submitted to them for their concurrence, and that while the treaty of 1868 provided that no treaty for the cession of any portion of the reservation should be of any force against the Indians unless executed and signed by at least three-fourths of all the male adult Indians occupying the same, yet the agreement was signed by less than three-fourths, and that those who did sign were misled by representations and false translations and did not comprehend the nature of the agreement; that from the time of the agreement down to the enactment mentioned the Indians repeatedly

protested to Congress against the ratification of the agreement, calling its attention to these objections, and that a memorial signed by 571 Indians, who attended a general council of these tribes, which stated the substance of all of these objections, was forwarded to the Commissioner of Indian Affairs, who forwarded it to the Secretary of the Interior January 5th, 1900, with the request that it be forwarded to the Committees on Indian Affairs of the Senate & House of Representatives, and it was so forwarded; that the act of June 6, 1900, and the further supplementary act of March 3, 1901, provided for the
45 allotment to each member of the tribes of 160 acres of land, for the setting apart of 480,000 acres for common grazing purposes, for the payment of $500,000 in cash, distributed *per capita*, and for the retaining and investment at 5% by the United States of $1,500,000 and the payment of the interest as it accrued to the members of the tribes *per capita*, and for the opening to settlement by white people, under the proclamation of the President of the United States, of the remaining, about 2,000,000 acres; that such opening to settlement will be made, unless restrained, immediately after August 6, 1901; that the provisions of the act of June 6, 1900, under the circumstances, are unconstitutional and void, as the Indians will thereby be deprived of their lands without due process of law.

He alleges "that the question of allotment of their said lands in part and the sale of their surplus lands and the treaties by which said lands are held is one of *common* and *general* interest to all the members of the said confederated tribes of Kiowa, Comanche, and Apache Indians residing in said Territory, and against whom it is threatened" to enforce the provisions of the acts of Congress which "will deprive said confederated tribes of their land," and that therefore he brings his suit for himself and as well all other resident members of the confederated tribes.

He prays that the defendants and their agents may be *injoined* from proceeding further against him "and against the said Kiowa, Comanche, and Apache Indians in carrying into effect the provisions of said acts."

A rule to show cause was issued, and in response thereto the
46 defendants have appeared by counsel and submitted an affidavit showing that all of said Indians belonging to said tribes have taken their allotments of land in severalty under said act of June 6, 1900, and that 480,000 acres of land for grazing purposes have been selected and set apart under its provisions, and have objected, first, that the complainant has no such right in the subject of his bill as gives him any standing in a court of equity or entitles him to injunctive relief, and that his joining any member of other Indian tribes similarly situated is ineffectual to give such standing; and, second, that this court is without jurisdiction in the premises, because the alleged grievance was created by the political department of the Government, that the matter is exclusively within its control and cognizance, and that the remedy must be sought there.

The interest of the confederated tribes in the lands under the treaty of 1868 is a right of occupancy, a right of which they can

dispose only with the consent of the United States. The complainant or any other individual Indian has no separable or personal interest in the land itself, unless he has availed himself of the right of selecting land for farming purposes. His right is one that is common to all the members of the tribes who reside upon the land, a right derived from membership that continues while he remains a member of the community, and ceases when he severs his connection with the tribe. When he leaves and ceases to jointly occupy he loses this right, which is derived from association. He has no personal right of which he can dispose during life, and in the event of his death while in the enjoyment of such occupancy he transmits no right to his descendants, who derive their right *not* through him, but from the
47 common source. The threatened injury which the bill seeks to enjoin will affect the complainant only as a member of the confederated tribes. The injuries that he apprehends are not peculiar to himself, but of the same kind as those that will be sustained by the other members, and there is much force in the objection that he cannot maintain this suit either alone or in behalf of himself and of all other members of the confederated tribes residing in Oklahoma Territory. Complainant has obtained leave to amend his bill by joining as coplaintiffs a number of other Indians who recite that they are authorized to act for the tribes, but they still sue in the same form for themselves and all other members. If the complainant has not a sufficient interest in himself to maintain the suit in his own name, and his coplaintiffs are in like situation, the multiplication of such complainants would be unavailing.

(Georgetown *v.* Alexandria Canal Co. *et al.*, 12 Pet., 91.)

But, conceding that the proper complainant is before the court, what is the case made? The land was "set apart for the undisturbed use and occupation" of these tribes by the terms of the treaty ratified and confirmed by the Senate of the United States and by the President July 25, 1868. Article 12 of this treaty provides that "no treaty for the cession of any portion or part of the reservation herein described, which may be held in common shall be of any validity or force as against the said Indians unless executed and signed by at least three-fourths of all the adult male Indians occupying the same." The agreement of October 6, 1892, was negotiated by three commissioners on the part of
48 the United States, and was signed by them and by 456 Indians, to whom it had been translated and interpreted by their own interpreters, and the Indian agent certified that those who signed were more than three-fourths of the adult male members of the tribes. By its terms it was to be effective only when ratified by the Congress of the United States. It was not ratified until June 6, 1900, and meantime the Indians, by their various delegations, at session after session of Congress presented to the appropriate committees of both houses their objections to such ratification, based upon the misrepresentations claimed to have been made to them, the misinterpretation of the terms of the agreement claimed to have

been given them by their interpreters, the failure to obtain the signature of three-fourths of the adult males, and the other objections set out in this bill. By the act of March 3, 1871, embodied in section 2079, Revised Statutes of the United States, it was provided that thereafter "No Indian nation or tribe shall be acknowledged as an independent nation, tribe, or power with whom the United States may contract by treaty, but no obligation of any treaty * * * prior to March 3, 1871, shall be hereby invalidated or impaired." No question is made as to the power of Congress to so enact, to substitute the form of contract for the form of treaty in dealing with the Indians respecting their rights, or that the agreement made subject to ratification by Congress was not as binding upon them as a treaty
49 made subject to ratification by the Senate and the President, but it is claimed that the act ratifying the treaty and the acts supplementary thereto are unconstitutional and void, as depriving them of their property without due process of law.

It has been repeatedly declared judicially that it is difficult to define with exactness the meaning of that phrase. What is due process of law under given conditions and circumstances would fail to reach the constitutional requirement under others.

"It may be stated generally that due process of law requires an orderly proceeding adapted to the nature of the case, in which the citizen has an opportunity to be heard and to defend, enforce, and protect his rights. A hearing or an opportunity to be heard are absolutely essential."

(Earl, J., in Stuart *vs.* Palmer, 74 N. Y., 191.)

"The exercise of the right of eminent domain," says an eminent jurist, "stands on the same ground with the power of taxation. Both are emanations of the law-making power. They are attributes of political sovereignty, for the exercise of which the legislature is under no necessity to address itself to the courts. In imposing a tax or in appropriating the property of a citizen, or a class of citizens, for a public purpose, with a proper provision for compensation, the legislative act is itself due process of law."

(Denio, J., in People *vs.* Smith, 21 N. Y., 595.)

The proceeding adopted in this case is the ordinary course
50 followed in many like cases where Indians of other tribes have agreed to accept lands in severalty, with compensation for lands taken by the Government and thrown open for settlement. It is the usual process. The method was, first, negotiation; then an agreement specifying terms subject to ratification by Congress; then full opportunity to be heard in the committees of Congress, and finally a legislative act providing for compensation; for an allotment in severalty of 160 acres to each resident soul in the tribes, to become ultimately vested in fee-simple; for the protection of those who have made improvements upon land and who are occupying such land, and for the setting apart of 480,000 acres of grazing land for use in common by the tribes.

Tested by the principles declared in the cases quoted, this pr
cedure was due process of law.

The exercise of the sovereign power in this legislation is som
what analagous to the exercise of the right of eminent domain, an
the question would seem to be whether this is taking private pro
erty for public use without just compensation, in violation of anoth
provision of the fifth amendment of the Constitution, rather tha
whether such taking is due process of law; but it is not claime
that the statute violates that provision.

If it be the fact, as claimed, that the agreement was the result
misunderstanding and deception, and that it was not signed by th
number of adult males required by article 12 of the treaty, y
these matters do not affect the question of due process of law
They were matters for the consideration of Congress; the
51 were submitted to it; it is to be assumed that they wer
carefully considered and determined with due regard to th
public interests and the rights of the Indian; and when suc
consideration ripened into legislation, they were concluded and for
closed.

Where an objection was taken to the validity of an Indian treat
on the ground that the band were not represented by the chiefs an
head men in its negotiation, it was said by Justice Nelson: "Th
treaty after — executed and ratified by the proper authorities of th
Government becomes the supreme law of the land, and the court
can no more go behind it for the purpose of annulling its effects an
operation than they can go behind an act of Congress."

Fellows *v.* Blacksmith, 19 How., 366, 372.
Foster & Elam *v.* Neilson, 2 Pet., 307.
Florida *v.* Furman, 180 U. S., 402, 438.

It is urged that inasmuch as the act of June 6, 1900, amended th
agreement, and that such amendments were not submitted to th
Indians and concurred in by them, there has not been such meetin
of the minds of the contracting parties as to make a valid contract
If the validity of the legislation depended upon the concurrence o
the Indians in its various provisions, the objection would have grea
force; but manifestly the existence of such a necessity would be a
almost insuperable obstacle to all legislation in which their right
are concerned; it would be inconsistent with the relation that they
occupy to the Government, and in direct conflict with that sover
eignty that the United States of necessity, of right, and in fact exer
cises over them. They are not independent nations. They are
dependent "wards" of this nation "in a state of pupilage," subjec
to the control of Congress. Justice Miller says: "The power
52 of the General Government over these remnants of a rac
once powerful, now weak and diminished in numbers, i
necessary to their protection, as well as to the safety of those among
whom they dwell. It must exist in that Government because it ha
never existed anywhere else, because the theatre of its exercise i
within the geographical limits of the United States, because it ha

never been denied, and because it alone can enforce its laws on all the tribes." He also says that "after an experience of a hundred years of the treaty-making system of government, Congress has determined upon a new departure, to govern them by acts of Congress" (U. S. *v.* Kagama, 118 U. S., 375).

Congress is constantly exercising this power in some form of legislation over these dependent communities, and it has been repeatedly held that the propriety of its exercise is not a question for inquiry or determination by the courts, but belongs exclusively to the political department of the Government.

In the case of Cherokee Tobacco (11 Wall., 616) it appears that by a treaty of 1866 the right was given to every Cherokee Indian and freed person residing in the Cherokee nation to sell the products of his farm and any merchandize or manufactured products, and to ship or drive them to market without restraint, paying any tax levied by the United States on such as should be sold out of the Indian Territory. By the act of 1868, Congress extended the internal-revenue laws imposing taxes on tobacco to such articles produced anywhere within the exterior boundaries of the United States.

Justice Swayne said: "It is insisted that this section cannot
53 apply to the Cherokee nation because it is in conflict with the treaty. Undoubtedly one or the other must yield. The repugnancy is clear and they cannot stand together."

"A treaty may supersede a prior act of Congress (Foster *v.* Neilson, 2 Pet., 314), and an act of Congress may supersede a prior treaty. In the cases referred to these principles were applied to treaties with foreign nations. Treaties with Indian nations within the jurisdiction of the United States, whatever considerations of humanity and good faith may be involved and require their faithful observance, cannot be more obligatory. They have no higher sanctity, and no greater inviolability or immunity from legislative invasion can be claimed for them. The consequences in all such cases give rise to questions that must be met by the political department of the Government. They are beyond the sphere of judicial cognizance. In the case under consideration the act of Congress must prevail as if the treaty were not an element to be considered. If a wrong has been done, the power of redress is with Congress, not with the judiciary, and that body, when being applied to, it is to be presumed, will promptly give the proper relief."

In United States *v.* Kagama (*supra*) two questions were certified to the Supreme Court on division in opinion of the circuit court of the United States, district of California—first, whether the act of Congress of March 3, 1885, subjecting an Indian committing the crime of murder upon another Indian upon an Indian reservation within the limits of a State to the same laws and penalties and to trial in the same courts as are all other persons committing that crime within the exclusive jurisdiction of the United States, was constitutional; second, whether the courts of the United States
54 have jurisdiction to try such crimes. Section 2146 of the Revised Statutes of the United States expressly excepted

from the penal laws of the United States crimes committed by one Indian against the person or property of another Indian. The court held that the act did not interfere with powers of the State or the jurisdiction of its courts, and that it was within the competency of Congress, as the Indians were the wards of the nation, subject to the power of the Government. Although this act changed the jurisdiction in a matter affecting life, its constitutionality was not assailed upon that ground. In Cherokee Nation *v.* Kansas R'y Co., 135 U. S., 641, it was held that Congress, in the exercise of the right of eminent domain without the consent of the Indians, might grant the right of way to a railway company through the Indian Territory and the lands of the Cherokee nation, notwithstanding that by treaty the United States covenanted and agreed that the lands ceded to that nation should at no future time without their consent be included within the territorial limits of any State or Territory, that it would secure to that nation the right to make laws and govern themselves, and guaranteed to them the title and possession of their lands and jurisdiction over their country. It was further held that such treaties evinced no intention on the part of the Government to constitute them a separate, independent, sovereign people, with no superior within its limits, and that the Indian tribes residing within the territorial limits of the United States are subject to their authority.

In U. S. *vs.* Old Settlers, 148 U. S., 427, jurisdiction had been given the Court of Claims to determine a claim against the
55 United States by a part of the Cherokee Indians known as the "old settlers," which claim arose out of former treaties between them and the United States, by which, it was alleged, the exclusive right to certain lands was guaranteed to them forever, but that certain other Indians, under a treaty made without the knowledge or consent of the old settlers, were located upon their lands by the United States, which infringement of their rights was continually opposed and resisted by them until 1846, when, acting under duress of liberty, life, and property, advantage being taken of their dependent and impoverished condition, they were forced to make an agreement, fraudulent in character, giving them a grossly inadequate compensation for the diminution of their property rights caused by such intrusion. In giving this jurisdiction it was stated in the statute that it was the intention of the act to allow that court "unrestricted latitude" in adjusting and determining that claim, so that the rights, legal and equitable, both of the United States and of said Indians, might be fully considered and determined. It was contended that this unrestricted latitude gave the court power to inquire into the question of duress and fraud in the execution of the agreement or treaty of 1846. The Court of Claims declined to go behind this treaty on the ground that it was not within the province of a court, either of law or equity, to determine that a treaty or an act of Congress had been procured by duress or fraud, and to declare it inoperative for that reason, and that it was not the purpose of the act to confer upon that court extrajudicial powers.

Approving this doctrine, the Supreme Court, by Chief Justice Fuller, says: "There is nothing in the jurisdictional act of February 25, 1899, inconsistent with the treaty of 1846 (or any other)
56 and nothing to indicate that Congress attempted by that act to authorize the courts to proceed in disregard thereof. Unquestionably a treaty may be modified or abrogated by an act of Congress, but the power to make and unmake is essentially political and not judicial, and the presumption is wholly inadmissible that Congress sought in this instance to submit the good faith of its own action or the action of the Government to judicial decision by authorizing the stipulations in question to be overthrown upon an inquiry of the character suggested, and the act does not in the least degree justify any such inference."

One of the latest enunciations by that court is in The United States *v.* Choctaw, &c., Nations, 179 U. S., 494. These cases were suits brought in the Court of Claims under the act of Congress of March 2, 1895, giving it jurisdiction to try and determine all questions that may arise in behalf of the United States, and the Choctaw and Chickasaw nations, and the Wichita and affiliated bands of Indians, so that their rights, legal and equitable, shall be fully considered and determined. One of the important questions considered was the construction of an article in the treaty of 1866, made between the Choctaws and Chickasaws and the United States. It involved the right of those Indians in certain lands and the question whether that treaty made an absolute, unconditional cession of these lands to the United States, free of any trust, express or implied. The court states the general rules as to the interpretation of written instruments and then proceeds:

"To what extent, if at all, have these rules been enlarged or modified when the instrument to be interpreted is a treaty between the United States and Indian tribes?"

57 After citing several cases bearing upon this question, Mr. Justice Harlan, delivering the opinion of the court, says (p. 532):

"In no case has it been adjudged that the courts could by mere interpretation or in deference to its view as to what was right under all the circumstances incorporate into an Indian treaty something that was inconsistent with the clear import of its words. It has never been held that the obvious, palpable meaning of the words of an Indian treaty may be disregarded because, in the opinion of the court, that meaning may in a particular transaction work what it would regard as an injustice to the Indians. That would be an intrusion upon the domain committed by the Constitution to the political departments of the Government. Congress did not intend when passing the act under which this litigation was inaugurated to invest the Court of Claims or this court with authority to determine whether the United States had in its treaty with the Indians violated the principles of fair dealing."

Further on (p. 535) he adds:

"It is said in the present case that the interpretation of the treaty

in accordance with the views of the United States would put the Government in the attitude of having acquired lands from the Indian at a price far below their real value. Even if this were true it would not authorize the court in determining the legal rights of the parties to proceed otherwise than according to the established principles of interpretation, and out of a supposed wrong to one party evolve a construction not consistent with the clear import of the words of the treaty. If the treaty of 1866, according to its tenor and obvious import, did injustice to the Choctaws and Chickasaws,
58 the remedy is with the political depart- of the Government.

As there is no ground to contend in this case that that treaty, if interpreted according to the views of the Government, was one beyond the power of the parties to make, it is clear that even if the United States did not deal generously with the Choctaws and Chickasaws in respect of the lands in dispute—and we do not mean to say that there is any ground whatever for so contending—the wrong done must be repaired by Congress, and cannot be remedied by the courts without usurping authority that does not belong to them."

It appears to me to be plain that, because no constitutional provision is violated by the questioned legislation, and because the other grounds of assault are cognizable solely by the political department of the Government and are beyond the sphere of the judicial department, the application for preliminary injunction must be overruled.

59 *Demurrer to Bill of Complaint and Amendment Thereto.*

Filed June 21, 1901.

In the Supreme Court of the District of Columbia.

LONE WOLF, ETC., Complainants,
v.
ETHAN A. HITCHCOCK, Secretary of the Interior, *et al.*, Respondents.

No 22338, Doc. No. 50. In Equity.

Come now the respondents, and, by protestation, not confessing or acknowledging all or any of the matters and things in the complainants' bill of complaint or the amendment thereto contained to be true in such manner and form as the same are therein set forth and alleged, do demur to said bill of complaint and the amendment thereto upon and for the following grounds:

1. Said bill of complaint, with the amendment thereto, is bad in substance and does not state facts sufficient to entitle the complainants or either of them to the relief prayed for or to any relief.

2. The court has no jurisdiction over the subject-matter of the suit.

3. The complainants, as individual members of said Indian tribes, are without title to the relief prayed for or to any relief.

WILLIS VAN DEVANTER,
Solicitor for Respondents.

60 I hereby certify that, in my opinion, the foregoing demurrer is well founded in law.

WILLIS VAN DEVANTER,
Solicitor for Respondents.

UNITED STATES OF AMERICA, }
District of Columbia, } ss:

Ethan A. Hitchcock, who, as Secretary of the Interior, is one of the respondents in the above-entitled suit, being sworn, on oath says that the foregoing demurrer is not interposed for delay.

E. A. HITCHCOCK.

Subscribed in my presence and sworn to before me this 21st day of June, A. D. 1901.

[SEAL.] W. BERTRAND ACKER,
Notary Public in and for D. C.

61 *Final Decree.*

Filed Jun- 26, 1901.

In the Supreme Court of the District of Columbia.

LONE WOLF, ETC., Complainants, *vs.* ETHAN A. HITCHCOCK, Secretary of the Interior, *et al.*, Respondents.	No. 22338, Doc. 50. In Equity.

Come now the parties to this cause, by their respective solicitors, and by the agreement of the parties stated in open court this cause is at this time submitted to the court upon the demurrer of the respondents to the complainants' bill and the amendment thereto heretofore allowed, and the same being argued by counsel and the court, being fully advised in the premises, does now consider, order, and decree that the said demurrer be, and the same is hereby, sustained; and the complainants electing to stand upon their said bill and the said amendment thereto, it is, by the court, considered, ordered, and decreed that the bill of the complainants be, and the same is hereby, dismissed; that the respondents go hence without day, and that the respondents recover from the complainants their costs, to be taxed by the clerk. Whereupon the complainants take an appeal to the Court of Appeals of the District of Columbia and ask that the same be noted in this decree, which is accordingly done; and the amount of the bond to be given by the appellants to cover costs is hereby fixed at one hundred dollars, in lieu of giving which the complainants, at their option, may deposit in the clerk's office the sum of one hundred dollars to cover such costs.

Dated June 26, 1901.

A. C. BRADLEY, *Justice.*

O. K.
W. V. D.

62 *Memorandum.*

June 27, 1901.—$100.00 deposited by appellants in lieu of appeal bond.

63 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia,* } ss:

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 62, inclusive, to be a true and correct transcript of the record, as prescribed by rule 5 of the Court of Appeals of the District of Columbia, in cause No. 22338, equity, wherein Lone Wolf *et al.* are complainants and Ethan A. Hitchcock *et al.* are defendants, as the same remains upon the files and of record in said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, this 27th day of June, A. D. 1901.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1109. Lone Wolf *et al.*, appellants, *vs.* Ethan A. Hitchcock *et al.* Court of Appeals, District of Columbia. Filed Jun- 27, 1901. Robert Willett, clerk.

37 WEDNESDAY, *December 4th, A. D.* 1901.

LONE WOLF, Principal Chief of Kiowas; ESHITIE, Principal Chief of Comanches; White Buffalo, Ko-Koy-Taudle, Mar-Mo-Sook-Car-Wer, Narwats, Too-Wi-Car-Ne, William Tivis, Delos K. Lone Wolf, Appellants,
vs.
ETHAN A. HITCHCOCK, Secretary of the Interior; WILLIAM A. JONES, Commissioner of Indian Affairs, and Binger Hermann, Commissioner of the General Land Office. } No. 1109.

The above-entitled cause was submitted to the consideration of the court on the printed record and briefs filed herein by Mr. Wm. M. Springer attorney for the appellants, and by Mr. Assistant Attorney General Van Devanter attorney for the appellees.

38 LONE WOLF, Principal Chief of Kiowas, and Others, Appellants,
vs.
ETHAN A. HITCHCOCK, Secretary of Interior, and Others. } No. 1109.

(Mr. Chief Justice ALVEY delivered the opinion of the court.)

The original bill in this case was filed June 6, 1901, by Lone Wolf, describing himself as chief of the Kiowa tribe of Indians, who sued as well for himself as all other members of the confederated tribes of Kiowa, Comanche, and Apache Indians, residing in the Territory of Oklahoma, against Ethan A. Hitchcock, Secretary of the Interior Department, William A. Jones, Commissioner of Indian Affairs, and Binger Hermann, Commissioner of the General Land Office, to obtain an injunction against those officers. The bill was afterwards amended, whereby Eshitie, principal chief of the Comanche tribe of Indians, and certain other named Indians, members of the Kiowa, Comanche and Apache confederated tribes of Indians, residing in the Territory of Oklahoma, and delegates duly appointed by said tribes at a general council held by them, were made parties complainants, by leave of the court. The bill, however, is not filed by the tribes in their tribal capacity, but only as members of the tribes, and who claim to represent such other members of the tribes as may come in and show themselves aggrieved by what has been done by the United States. The object of the bill of complaint is to obtain an injunction to restrain the defendants from carrying into effect and operation the act of Congress approved June 6, 1900 (31 St., 672, 676), amending in some respects and ratifying an agreement between the Kiowa, Comanche and Apache tribes of Indians, whereby the Indians ceded to the United States their interest in and claim to certain lands described in the agreement, and also from carrying into effect the act of Con-
39 gress of March 3, 1901, (31 St., 1093,) making further provision as to the manner of disposing of the lands so ceded.

The preliminary injunction prayed for was refused by the court below; and the defendants appearing, entered a demurrer to the bill, and the case was heard upon the demurrer. The court, sustaining the demurrer, entered a final decree dismissing the bill, on the 26th of June, 1901, and from which decree this appeal is taken.

In the view we have of this case, it is unnecessary to state with particularity all the allegations of the bill. It will suffice to state as the result of the allegations of the bill, as was clearly stated in the opinion of the court below upon the application for the preliminary injunction, that the three confederated tribes of Indians, Kiowa, Comanche and Apache, had set apart for their absolute and undisturbed use and occupation three million acres of land under treaty proclaimed August 25, 1868, which they are at present occupying, but that their possession is threatened to be disturbed by the defendants in the enforcement of the provisions of the act of Congress approved June 6, 1900; that this act of Congress is unconstitutional and void because it will deprive the confederated tribes of their lands without their consent and against their protest; that the said act of Congress of June 6, 1900, purports to ratify a prior agreement, made and signed by commissioners on the part of the United States, and by 456 Indians, dated October 6th, 1892, but that the agreement has been amended and changed in material respects by the statute; that the changes had not been submitted to the Indians signing the agreement, for their concurrence, and that, while the treaty of 1868 provided that no treaty for the cession of any portion of the reservation should be of any force against the Indians, unless executed and signed by at least three-fourths of all the male adult Indians occupying the same, yet the agreement was signed by less than three-fourths, and that those who did sign the agreement of cession were misled by representations and false translations, and did not comprehend the nature of the agreement; that from the
40 time of the agreement down to the act of Congress mentioned the Indians repeatedly protested to Congress against the ratification of the agreement, calling its attention to these objections; and that a memorial signed by 571 Indians, who attended a general council of these tribes, which stated the substance of all these objections, was forwarded to the Commissioner of Indian Affairs, who forwarded it to the Secretary of the Interior January 5th, 1900, with the request that it be forwarded to the Committees on Indian Affairs of the Senate and House of Representatives, and it was so forwarded: That the act of June 6, 1900, and the further supplementary act of March 3, 1901, provided for the allotment to each member of the several tribes of 160 acres of land; for the setting apart of 480,000 acres for common grazing purposes; for the payment of $500,000 in cash, to be distributed *per capita*, and for the retaining and investment at 5 per cent., by the United States of $1,500,000, and the payment of interest as it accrued to the members of the tribes *per capita*; and for the opening to settlement by white people, under the proclamation of the President of the United States, of the remaining portion of said original reservation, being about 2,000,000 acres; that such opening to settlement would be made, unless re-

strained, immediately after Aug't 6, 1901; that the provisions of the act of June 6, 1900, under the circumstances, are unconstitutional and void, as the Indians will thereby be deprived of their lands without due process of law.

These are the most material facts alleged, though the bill contains many subordinate facts, which are set forth with great particularity; but we do not deem it essential to state them in this opinion. It is charged, as the result of the facts alleged, "that so much of said act of Congress of June 6, 1900, and so much of said acts supplementary thereto and amendatory thereof as provide for the ratification of said Jerome treaty, the allotment of certain lands mentioned therein to members of said Indian tribes, the surveying, laying out, and platting town sites and locating county-seats
41 on said lands and the ceding to the United States, and the opening to settlement by white men of two million acres of land, were enacted in violation of the property rights of the said Kiowa, Comanche and Apache Indians, and if carried into effect will deprive said Indians of their lands without due process of law, and that said parts of said acts are contrary to the Constitution of the United States, and are void, and confer no right, power, or duty upon the said Secretary of the Interior or upon the said Commissioner of Indian Affairs, or upon the said Commissioner of the General Land Office, to do or perform any of the acts or things required to be done and performed by said pretended acts of Congress."

The grounds upon which the application for relief is based are then summarized, and reduced to four propositions, as follows:—

First. That the said Indians were induced to sign the said treaty or agreement of cession by false and fraudulent translations, and that none of those who signed said treaty or agreement understood its provisions.

Second. That by the provisions of the treaty of settlement, proclaimed August 25, 1868, no part or portion of said lands could be ceded or alienated without the consent of three-fourths of the male adult members of said tribes; and that three-fourths of such male adults have never signed the treaty or agreement of October 6, 1892, approved by act of Congress of June 6, 1900, whereby it is claimed by the United States that said Indian tribes have ceded or alienated a portion of their said lands.

Third. That eight months prior to the time Congress pretended to ratify the said treaty or agreement of October 6, 1892, 571 adult male members of said tribes which were more than three-fourths of such male adult Indians of said tribes met in general council, in said reservation, and solemnly repudiated the said treaty or agreement, and prayed Congress to reject the same, and not to accept it as their free act and deed.

42 *Fourth.* That in the act of Congress pretending to ratify said treaty or agreement numerous amendments, changing important provisions of said agreement were made by Congress, and that said treaty or agreement was attempted to be put in force without submitting said amendment or the treaty as thus amended to the approval of said Indians.

Discovery is sought by answers to certain interrogatories incorporated in the bill; and the relief prayed is, that the defendants, in their official capacity, their agents or attorneys, "may be restrained by injunction from proceeding further against the complainants, and against said Kiowa, Comanche, and Apache Indians, and especially from proceeding further in allotting any of said lands to said Indians, in surveying, laying out, and platting town sites and county-seats on said lands, and from opening any of said lands to settlement by white people, and generally from doing or performing any of the acts or things required by said void acts of Congress."

The argument for the complainants has been urged in support of three general propositions, that is to say:—

First. That by the treaty of August 25, 1868, certain rights in the lands in question were conferred upon the Indian tribes mentioned in that treaty, of which they cannot be deprived except by their consent obtained in the manner provided for in article XII of that instrument, and that such consent has not been obtained; but in fact, as it is alleged, the apparent or pretended consent of the Indians was obtained by fraud and deception, and that the agreement was signed by less than three-fourths of all the adult male Indians.

Second. That the right of occupancy, conferred upon the Indians by the treaty of 1868, is a vested right which can be taken away or disturbed only by due process of law, and upon the payment of just compensation; and that the agreement of cession and the act of Congress ratifying and adopting that agreement do not constitute due process of law within the meaning of the Constitution.

Third. That, as a legal consequence of the preceding contentions, if they be well founded in fact, the agreement of cession and the act of Congress ratifying the same are void, and that it is within the scope of judicial power to restrain by injunction the execution and enforcement of such void acts.

43

1. The first question is, what was the effect of the agreement of cession to the United States and the act of Congress thereon, ratifying and confirming the agreement, upon the treaty made with these Indians in 1868? This question admits of but one answer. So far as the provisions of the treaty and the subsequent act of Congress may be in conflict, the treaty must yield, and the act of Congress be allowed its full operation and effect. Therefore the article XII of the treaty of 1868, cannot be appealed to as having force and operation to control the subsequent agreement of cession and the act of Congress ratifying and confirming the same. By the act of Congress of March 3, 1871, (Rev. Stat. U. S. sec. 2079) it is provided that thereafter "no Indian nation or tribe shall be acknowledged as an independent nation, tribe, or power with whom the United States may contract by treaty, but no obligation of any treaty * * * prior to March 3, 1871, shall be hereby invalidated or impaired." Therefore treaties, in the international sense, are no longer the instruments to be employed in dealing with our dependent Indian tribes, but, instead of treaties, such conventions or contracts as Congress may authorize or approve. And in this case, it is not contended, as we understand counsel for the complainants, that it was

not competent to Congress thus to provide as to the manner of dealing with or procuring cession from the Indian tribes mentioned in the treaty of 1868, in respect to the lands occupied by them under that treaty. Nor is it contended that the agreement of cession of October 6, 1892, and the act of Congress of June 6, 1900, ratifying and adopting that agreement, are not appropriate instruments for the purpose intended, within the limits and scope of the power and control of Congress over the Indians, and of the lands and reservations occupied by them under the Government of the United States;

44 and, in the absence of all alleged fraud and imposition in procuring the agreement of cession and the act of ratification by Congress, those acts would be fully and completely effective. It is, however, alleged, and earnestly contended in argument, that there has been a fraud and deception practiced upon the treaty rights of the Indians, and that by means of such fraud and deception those of the Indians who signed the agreement did so without understanding the purport and effect of the agreement, and consequently, they have been deceived. It is alleged that less than three-fourths of the male adult Indians signed the agreement, and that those who did sign it were induced to do so by false translations and misrepresentations; and that the matter of such deception was brought to the attention of Congress before the passage of the act of ratification of the agreement of cession. These are grave charges, and if they be founded in fact, there ought to be some mode of redress for the wrong. But the question is, whether the courts can afford the redress sought in this case? Acts of Congress can only be impeached and declared void by the courts for the want of constitutional authority to enact them. If there be a doubt as to the validity of the act brought into question, that doubt must be resolved in favor of the validity of the act, and against the allegation asserting its invalidity or unconstitutionality. Nor can an act of Congress be declared void and without effect because of fraudulent or improper influences exerted in procuring its passage. It makes no difference in the effect, whether the motives that influenced the passage of the act be public or personal, honest or corrupt; the courts cannot enter into the consideration of such questions. They are matters that pertain to legislative action exclusively, and with which courts have nothing to do. Therefore courts will not permit questions of improper legislative motives or questions of hardship, deception, or oppression in the effect of the act, to be raised to affect the validity of the act, but they will in all cases assume that the legisla-

45 ture was possessed of full information upon the subject of the act, and that the motives were proper that actuated the legislature in the passage of the act in question. *Fletcher vs. Peck* 6 Cranch, 87, 128; *Ex parte McCardle*, 7 Wall. 506; *Doyle vs. Ins. Co.*, 94 U. S. 535.

It is clear, therefore, that the judiciary has no control whatever over legislation, and no power whatever to question its purposes or motive, provided always that such legislation is kept within the limits of the constitutional grant of power. And from this it follows that the propriety or justice or policy of legislation, within the con-

stitutional limits, is exclusively for the legislative department to determine; for if a court were to assume to substitute its own judgment for that of the legislature, it would at once pass beyond its legitimate sphere, and enter a field where it would be impossible to set limits to its interference, except as might be prescribed in its own discretion.

It is therefore a settled axiom in jurisprudence, that an act of Congress, or of the legislature, must be accepted by the courts as made and promulgated by legislative authority; and if it be within constitutional limitation, the only remedy that can be invoked for any wrong or injury resulting therefrom, must be sought from the legislative department of the government. This principle is recognized in numerous cases, and in several recent cases in the Supreme Court of the United States. In the case *United States vs. Old Settlers*, 148 U. S. 427, 468, the court was required to pass, by act of Congress, upon a certain claim preferred by an Indian tribe against the United States, and in which a treaty with the Indians was involved. In that case it was sought to have the claimants relieved of certain provisions of the treaty, because of fraud and duress alleged to have been practiced by the United States. But the court, in disposing of the contention, said: "There is nothing in the jurisdictional act of February 25, 1889, inconsistent with the treaty of 1846, (or any other), and nothing to indicate that Congress attempted by that act to authorize the courts to proceed in disregard thereof. Un-
46 questionably a treaty may be modified or abrogated by an act of Congress, but the power to make and unmake is essentially political and not judicial, and the presumption is wholly inadmissible that Congress sought in this instance to submit the good faith of its own action or the action of the Government to judicial decision, by authorizing the stipulations in question to be overthrown upon an inquiry of the character suggested, and the act does not in the least degree justify any such inference."

The same principle has been fully adopted and applied in the very recent case of *United States vs. Choctaw & Nations*, 179 U. S. 494, 534, 535, where the subject is fully treated. In that case, in discussing the provisions of a treaty made by the United States with certain Indian nations or tribes, for the cession of lands to the United States, the court said: "But if the words used in the treaty of 1866, reasonably interpreted, import beyond question an absolute, unconditional cession of the lands in question to the United States free from any trust, then the court cannot amend the treaty or refuse to carry out the intent of the parties, as gathered from the words used, merely because one party to it held the relation of an inferior and was politically dependent upon the other, or because in the judgment of the court the Indians may have been overreached. To hold otherwise would be practically to recognize an authority in the courts not only to reform or correct treaties, but to determine questions of mere policy in the treatment of the Indians which it is the function alone of the legislative branch of the Government to determine."

The principle which forbids the courts from going behind a treaty or an act of Congress for the purpose of annulling its effect and

operation, is nowhere more clearly stated than by Mr. Justice Nelson in the case of *Fellows vs. Blacksmith et al.*, 19 How. 366, 372. In that case the contention was that the Indians were not represented by their chiefs and head men of the band in the negotiation of the treaty, and therefore the treaty was invalid. But the court
47 said: "An objection was taken, on the argument, to the validity of the treaty, on the ground that the Tonawanda band of the Seneca Indians were not represented by the chiefs and head men of the band in the negotiations and execution of it. But the answer to this is, that the treaty, after executed and ratified by the proper authorities of the Government, becomes the supreme law of the land, and the courts can no more go behind it for the purpose of annulling its effect and operation, than they can go behind an act of Congress." Citing, 1 Cranch 103. 6 Pet. 735; 10 How., 442; 2 Pet. 307, 309, 314; 3 Sto. Const. Law, p. 695.

The agreement of cession in this case, after it was duly ratified and confirmed by Congress, has the same conclusive force and effect as a treaty ratified and approved by the Senate; and here we have also the conclusive effect and operation of an act of Congress which the courts cannot go behind of or impeach for alleged fraud and deception practiced upon the Indians in procuring from them the agreement of cession of the land in question.

This would seem to be a full answer to the application made by the bill, and we might stop here and affirm the decree of the court below. But the second ground taken in support of the claim for the relief prayed for has been urged with a good deal of earnestness, and we therefore deem it proper to give that contention brief consideration.

2. By this second ground of contention it is attempted to be maintained that the right of occupancy conferred upon the Indian tribes by the treaty of 1868, was or is a vested right of property of which they could not be divested, or cannot be deprived of the enjoyment thereof, without due process of law and upon payment of just compensation; and that the agreement of cession and the act of Congress ratifying the same do not constitute due process of law.

Clearly, there is no authority for this contention. The Indians within the United States or their jurisdiction, have, from the earliest period of the Government, been regarded and treated
48 as the mere wards of the Government, and the lands and reservations occupied by them have been assigned to them by the United States as places of domicile for the tribes, and they hold and occupy such lands with the assent of the United States, and under their authority. Such lands and reservations are held by the Indians subject to the control and dominion of the United States, and such Indian tribes are subject to be changed from one locality or reservation to another, as may best serve the purposes and policy of the Government in the administration of Indian affairs. They have no title in the lands they occupy, except in certain cases where treaties of settlement may have conferred a title in the land; their right is simply to occupy, at the will of the Government and under its protection. As was said by the Supreme Court, in the

case of *United States vs. Kagama*, 118 U. S. 379, "The power of th
General Government over these remnants of a race once powerfu
now weak and diminished in numbers, is necessary to their prote
tion, as well as to the safety of those among whom they dwell.
must exist in that Government, because it has never existed an
where else,—because the theatre of its exercise is within the ge
graphical limits of the United States,—because it has never bee
denied, and because it alone can enforce its laws on all the tribes
Keeping in mind, therefore, the dependent relation of the India
tribes to the United States, and the nature of the right under whic
they occupy the lands assigned to them, it is quite clear there is
room for the application of the principle of due process of law as b
tween the Indians and the United States, in a case such as the pre
ent. The question is not of a private right, but is of a public qual
fied right of occupancy by the Indian tribes, and no portion of th
Indians can set up or assert any mere individual right as a veste
right in the lands as against the Government. The power and co
trol over the subject-matter is vested in Congress, and is therefore
political as distinguished from a judicial subject of inquiry. Th
agreement of cession and the act of Congress ratifying an
49 adopting such agreement, stand as the deliberate legislati
judgment upon the subject, and no matter what terms w
may apply to those acts, whether due process of law or some oth
terms, the agreement of cession as ratified, and the act of Congre
ratifying the same, are conclusive, (Murray's Lessee *vs.* Hoboke
Land Ins. Co., 18 How. 272, 285,) and no judicial inquiry can be a
lowed to bring those acts into question,—the subject-matter bein
plainly within the limit of congressional power.

Without further notice of the positions urged on behalf of th
complainants; and without passing upon the motion entered by th
defendants to dismiss the appeal of the appellants, we shall affir
the decree of the court below; *and it is so ordered. Decree affirme*

50 TUESDAY, *March 4th, A. D.* 1902.

LONE WOLF, Principal Chief of Kiowas; Eshitie, Principal Chief of Comanches; White Buffalo, Ko-Koy-Taudle, Mar-Mo-Sook-Car-Wer, Narwats, Too-Wi-Car-Ne, William Tivis, Delos K. Lone Wolf, Appellants,

vs.

ETHAN A. HITCHCOCK, Secretary of the Interior; William A. Jones, Commissioner of Indian Affairs, and Binger Hermann, Commissioner of the General Land Office.

January Term, 190
No. 1109.

Appeal from the supreme court of the District of Columbia.

This cause came on to be heard on the transcript of record fro
the supreme court of the District of Columbia, and was argued
counsel. On consideration whereof, it is now here ordered, adjudg

and decreed by this court that the decree of the said supreme court, in this cause, be and the same is hereby, affirmed, with costs.

Per MR. CHIEF JUSTICE ALVEY.

March 4, 1902.

51 In the Court of Appeals of the District of Columbia, January Term, 1902.

LONE WOLF ET AL., Appellants,
vs.
ETHAN A. HITCHCOCK ET AL., Appellees. } No. 1109. In Equity.

Motion for Re-argument.

Now come the complainants in the above-entitled cause, by William M. Springer their solicitor, and move the court for leave to re-argue this case, for the reasons following:

First. The court, in its opinion in this case, filed on the 4th day of March, 1902, inadvertently misstated the second ground of contention of counsel for appellants in the following extract from said opinion:

"By the second ground of contention it is attempted to be maintained that the right of occupancy conferred upon the Indian tribes by the treaty of 1868 was or is a vested right of property of which they could not be divested or cannot be deprived of the enjoyment thereof without due process of law and upon payment of just compensation; and that the agreement of cession and the act of Congress ratifying the same do not constitute due process of law."

The second contention of counsel for appellants is stated on page 2 of the reply brief, and is to the effect that an agreement between the United States and an Indian tribe by which lands are ceded or the right to their use and occupancy is guaranteed is a contract, which is binding upon both parties, and cannot be abrogated or annulled without the consent of both parties.

Second. The court in its opinion omitted any reference to authorities cited in appellants' brief, which show conclusively "that the Indian right of occupancy to lands can only be extinguished by the voluntary consent of the Indians." (16 Am. and Eng. Encyc. of Law, second edition, pages 230–231), and that "the right of
52 the Indians to their occupancy is as sacred as that of the United States to the fee." (U. S. *vs.* Cook, 19 Wallace, pages 292–'3.)

Third. The court erred in stating that the "Indian tribes are subject to be changed from one locality or reservation to another as may best serve the purposes and policy of the Government in the administration of Indian affairs;" and that "they have no title in the lands they occupy, except in certain cases where treaties of settlement may have conferred a title in the land; their right is simply to occupy at the will of the Government and under its jurisdiction."

In Senate Document No. 76, first session, 56th Congress, page 5,

the Commissioner of Indian Affairs, in an official letter to the Secretary of the Interior, referring to the Medicine Lodge treaty in question, said:

"In all our dealings with the Indian tribes, I do not find that any agreement has been ever amended by the Congress without providing for the assent of the Indians interested." (See all of page 5 of said Senate document.)

This statement is historically correct, as is shown by the numerous treaties and agreements with Indians which have been made and executed from the foundation of the Government to the present time.

Fourth. This case has not been argued orally, upon the record as it now stands, but was submitted by agreement upon printed briefs.

Counsel for appellants therefore respectfully ask this honorable court to again consider the record in this case and to grant a rehearing in order that this case may be argued orally before this honorable court, and the whole matter again be considered.

Respectfully submitted.

WILLIAM M. SPRINGER,
Counsel for Appellants.

(Endorsed:) No. 1109. Court of Appeals, D. C., Jan'y term, 1902. Lone Wolf *et al.*, appellants, *vs.* Hitchcock, Sec'y, &c., *et al.* Motion for re-argument. Court of Appeals, District of Columbia. Filed Mar. 6, 1902. Robert Willett, clerk.

53 LONE WOLF, Principal Chief of Kiowas, and Others, Appellants, *vs.* ETHAN A. HITCHCOCK, Secretary of Interior, and Others. } No. 1109.

Opinion on Motion for Reargument.

(Mr. Chief Justice ALVEY delivered the opinion of the court.)

The motion for re-argument in this case fails to bring to our view any matter that we have not already fully considered; and therefore we find nothing in the reasons assigned for re-argument that would justify the granting the motion. We had supposed that when this court determined, as it did, that it had no power or jurisdiction to go behind the acts of Congress, ratifying the agreement of cession made by the Indians to the United States, and providing for the distribution and settlement of the lands ceded, to find grounds for declaring those acts null and void, that we had virtually decided the case against the complainants, and that their bill must necessarily be dismissed. But without making a question as to that controlling view of the case, the complainants, in their motion for re-argument, have suggested that this court has not treated the title of the Indians to the lands ceded to them by the treaty of 1868 as being anything more than a mere title by occupancy under and

in subordination to the power and control of the Congress of the United States. The treaty of 1868 certainly did not vest in the Indians, either in their individual or tribal capacity, anything more than the right to occupy the lands as against the United States until it was found necessary to make other provision for them. There was no grant of estates either of freehold or leasehold; only a mere right to occupy and use the lands, according to the habits and customs of the Indians; but those rights of the Indians were sacred to them as against every one, until Congress made provision
54 for assuming control over the lands, and making other disposition thereof, upon such terms and conditions as Congress should prescribe.

The contention of the complainants in this respect, as stated in the brief of their counsel, is this:—

"Indians occupying lands in this country under provisions of treaties with the United States cannot be deprived of the use and occupancy of such lands without their consent except by due process of law; and such lands cannot be taken from them except in compliance with the treaty provisions under which such lands were acquired. The right of the Indians as to their occupancy is as sacred as that of the United States to the fee."

We hold that it is not a judicial question of due process of law, to be determined by the courts, but that it is a political question for the determination by Congress; and Congress having acted with all the facts before it, including the memorial and protest of the Indians against the act of ratification, that act of ratification is final and conclusive, and the courts have no power or jurisdiction over the subject.

The case is of a nature that can be taken to the Supreme Court of the United States, and we shall be greatly gratified if that high tribunal may be able to find a way for affording a remedy for what is alleged to be a grievous wrong to the Indians. *Motion for re-argument overruled.*

55 FRIDAY, *March 14th, A. D.* 1902.

LONE WOLF, Principal Chief of Kiowas; Eshitie, Principal Chief of Comanches; White Buffalo, Ko-Koy-Taudle, Mar-Mo-Sook-Car-Wer, Narwats, Too-Wi-Car-Ne, William Tivis, Delos K. Lone Wolf, Appellants,

vs.

ETHAN A. HITCHCOCK, Secretary of the Interior; William A. Jones, Commissioner of Indian Affairs, and Binger Hermann, Commissioner of the General Land Office.

No. 1109. January Term, 1902.

On consideration of the appellants' motion for a re-argument in the above-entitled cause, it is by the court now here ordered that said motion be, and the same is hereby, overruled.

Per MR. CHIEF JUSTICE ALVEY.

March 14, 1902.

LONE WOLF, Principal Chief of Kiowas; ESHITIE, Principal Chief of Comanches; White Buffalo, Ko-Koy-Taudle, Mar-Mo-Sook-Car-Wer, Narwats, Too-Wi-Car-Ne, William Tivis, Delos K. Lone Wolf, Appellants,
vs.
ETHAN A. HITCHCOCK, Secretary of the Interior; William A. Jones, Commissioner of Indian Affairs, and Binger Hermann, Commissioner of the General Land Office.
No. 1169.

On motion of Mr. Wm. M. Springer of counsel for the appellants in the above-entitled cause, it is ordered by the court that said appellants be allowed an appeal to the Supreme Court of the United States. And it is further ordered that said appellants deposit with the clerk the sum of one hundred dollars for costs, in lieu of bond.

Memorandum.

March 17, 1902.—$100. deposited for costs in lieu of bond.

56 UNITED STATES OF AMERICA, *ss:*

To Ethan A. Hitchcock, Secretary of the Interior; William A. Jones, Commissioner of Indian Affairs, and Binger Hermann, Commissioner of the General Land Office, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to an order allowing an appeal, filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein Lone Wolf, principal chief of Kiowas; Eshitie, principal chief of Comanches; White Buffalo, Ko-Koy-Taudle, Mar-Mo-Sook-Car-Wer, Narwats, Too-Wi-Car-Ne, William Tivis, Delos K. Lonewolf, are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the appellants, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable R. H. Alvey, Chief Justice of the Court of Appeals of the District of Columbia, this 17th day of March, in the year of our Lord one thousand nine hundred and two.

R. H. ALVEY,
Chief Justice of the Court of Appeals of the District of Columbia.

Service accepted March 17, 1902.
WILLIS VAN DEVANTER,
Assistant Attorney General.

[Endorsed:] Court of Appeals, District of Columbia. Filed Mar. 17, 1902. Robert Willett, clerk.

57 Court of Appeals of the District of Columbia.

I, Robert Willett, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 56, inclusive, contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Lone Wolf, principal chief of Kiowas, Eshitie, principal chief of Comanches, White Buffalo, Ko-Koy-Taudle, Mar-Mo-Sook-Car-Wer, Narwats, Too-Wi-Car-Ne-William Tivis, Delos K. Lonewolf, appellants, *vs.* Ethan A. Hitchcock, Secretary of the Interior, William A. Jones, Commissioner of Indian Affairs, and Binger Hermann, Commissioner of the General Land Office, No. 1109, January term, 1902, as the same remain upon the files and records of said Court of Appeals.

Seal Court of Appeals, District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 17th day of March, A. D. 1902.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: File No. 18,454. District of Columbia Court of Appeals. Term No. 601. Lone Wolf, principal chief of Kiowas, *et al.*, appellants, *vs.* Ethan A. Hitchcock, Secretary of the Interior, William A. Jones, Commissioner of Indian Affairs, and Binger Herman, Commissioner of the General Land Office. Filed March 18th, 1902.